

EXHIBIT 93

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
ANNE BRYANT,

Index No. 5192/00

Plaintiff,

NOTICE OF MOTION

-against-

BROADCAST MUSIC, INC.
(a/k/a "BMI"), FORD KINDER,
KINDER & CO., LTD., VADIVOX,
INC., JULES M. "JOE" BACAL,
GRIFFIN BACAL, INC., STARWILD
MUSIC BMI, WILDSTAR MUSIC ASCAP,
SUNBOW PRODUCTIONS, INC.,

Defendants.

-----X
ANNE BRYANT,

Index No. 2821/02

Plaintiff,

-against-

SUNBOW PRODUCTIONS, INC.,

Defendant.

-----X

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Patrick J. Monaghan, sworn to on the 23rd day of January, 2007, and the exhibits annexed thereto, and upon all prior pleadings and proceedings heretofore and herein, Plaintiff ANNE BRYANT ("Plaintiff") by her attorneys MONAGHAN, MONAGHAN, LAMB

*Received by
Fed Ex 24 Jan. 2007*

& MARCHISIO, LLP, will move this Court at the Motion Support Part thereof at the Courthouse located at 40 Gleineida Ave., Carmel, New York on, on the 6thth day of February, 2007 at 9:30 a.m. or as soon thereafter as Counsel can be heard for an Order:

- a. Allowing this trial to proceed and to allow the testimony of Ford Kinder, Jules M. "Joe" Bacal and Carole Weitzman; and
- b. Granting Plaintiffs such other, further and different relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §2214(b) demand is hereby made that any answering affidavits and all memorandum of law, if any, are to be served upon the undersigned at least (7) days before the time at which this motion is to be heard.

Dated: New York, New York
January 23, 2007

MONAGHAN, MONAGHAN,
LAMB & MARCHISIO LLP

By: 

Patrick J. Monaghan, Jr.
Attorney for Plaintiffs
150 West 55th Street
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---and---

28 West Grand Avenue
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TO: Gloria C. Phares, Esq.
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10112

Judith M. Saffer, Esq.
Broadcast Music, Inc.
320 West 57th Street
New York, New York 10019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
ANNE BRYANT,

Plaintiff, Index No. 5192/00

-against-

AFFIRMATION IN
SUPPORT OF MOTION

BROADCAST MUSIC, INC.
(a/k/a "BMI"), FORD KINDER,
KINDER & CO., LTD., VADIVOX,
INC., JULES M. "JOE" BACAL,
GRIFFIN BACAL, INC., STARWILD
MUSIC BMI, WILDSTAR MUSIC ASCAP,
SUNBOW PRODUCTIONS, INC.,

Defendants.

-----X
ANNE BRYANT,

Index No. 2821/02

Plaintiff,

-against-

SUNBOW PRODUCTIONS, INC.,

Defendant.

-----X

PATRICK J. MONAGHAN, JR., an attorney and member of the
Bar of New York affirms, under penalty of perjury in
accordance with CPLR 2106, the following:

1. I am a member of MONAGHAN, MONAGHAN, LAMB &
MARCHISIO LLP, attorneys for Plaintiff ANNE BRYANT
("Plaintiff") and submit this Affirmation in Support of
Plaintiff's Motion for the Court to allow Plaintiff to

complete her case including, but not limited to, allowing and considering at trial the *de bene esse* testimony of Plaintiff's partner Dr. Ford Kinder ("Kinder")¹, Defendant Sunbow's representative Carole Weitzman ("Weitzman"), and Jules M. "Joe" Bacal ("Bacal"), who was subpoenaed and agreed to appear for the trial in December of 2006.

2. Pursuant to 3117(a)(2), Weitzman's deposition transcript is admissible at trial as testimony given by an authorized agent of Sunbow.² Kinder's testimony was taken pursuant to an Order of the Court on Plaintiff's motion in contemplation of being used at trial and is therefore admissible at trial. Thus all three witnesses must be heard and Plaintiff must be allowed to finish her case. Anything short of that is a travesty in this six year old case.

3. The testimony of Weitzman, Kinder and Bacal supports Plaintiff's claims on critical elements of Plaintiff's case. Plaintiff should not once again be deprived of a full opportunity to present her claims - an opportunity this Court has repeatedly said would be granted to her.

¹ By Order dated March 8, 2006, after Plaintiff's Motion for that relief, the Court ordered both the Kinder and David Berman depositions be allowed for trial.

² Carole Weitzman appeared at a deposition in 2004 on behalf of Sunbow which produced and represented her in response to Plaintiff's Notice

WHY THE COURT SHOULD ALLOW
THE TESTIMONY AND THE COMPLETION OF THE TRIAL

THE PROPER EVIDENTIARY STANDARD
EVIDENCE WHICH "TENDS" TO PROVE

4. Sunbow and BMI apparently do not understand the standard for admissible evidence on Plaintiff's case. They have interrupted the entire case, and the two disjointed phases of the trial which began in 2004, with meritless motions, arguments and appeals including a misguided removal to federal court; all actions deliberately calculated to interrupt and interfere with the Plaintiff's presentation of her case and overwhelm her counsel with a blitzkrieg of paper. The Court should not have allowed and indulged this conduct which even now has the case on hold once again.

5. The standard for admission of evidence is that Plaintiff's evidence need only tend to prove her claims, or tend to disprove the defenses. Each element of proof in her case need not be a ninth inning grand slam out of the park walk-off home run. It is sufficient if her proofs tend to support her claims or tend to disprove the defenses. That examination by the Court must abide a full trial of her case

and Plaintiff's Counsel must to be allowed to present the entire case without further interruption.

FORD KINDER DE BENE ESSE TRIAL TESTIMONY

6. This Court has already ruled, on Plaintiff's motion, which was vigorously contested, that Plaintiff would be allowed to go to Florida and take the videotaped testimony of Dr. Ford Kinder, Plaintiff's former partner and a former Defendant in this case. This de bene esse deposition was taken at great expense and inconvenience to Plaintiff [and to all parties for that matter] in August of 2006 in Miami, Florida. The deposition was videotaped at even greater expense to Plaintiff so that this Court could view it and make its own judgments as to weight, credibility and relevance in this non-jury case with a trial which began two and one half years ago.

THE COURT NOT ONLY ALLOWED,
BUT ENCOURAGED THE KINDER TESTIMONY TO BE TAKEN

7. In granting Plaintiff's motion in its Order of January 12, 2006, the Court specifically noted that the testimony of the out-of-state witnesses was sought by Plaintiff to preserve the testimony for trial and in fact,

in subsequent conferences, this Court prodded Plaintiff to pursue those depositions. Of course at additional expense, Plaintiff flew her expert David Berman in and after yet another pitched battle, he was allowed to testify at trial in December 2006 [and we submit very favorably for Plaintiff especially about her continuing right to publishing royalties.]

8. Without limiting its relevance on other issues in the case, Kinder's testimony is relevant and is proof of essential elements of Plaintiff's claims as stated below.

THE ISSUES

THE TESTIMONY FROM FORD KINDER, JULES M. "JOE" BACAL AND CAROLE WEITZMAN SUPPORTS PLAINTIFF'S CLAIMS ON CRITICAL ELEMENTS

BACAL EQUALS SUNBOW EQUALS GBI-CONSTRUCTIVE TRUST ISSUES

9. As part of her claims for imposition of a constructive trust and unjust enrichment against Sunbow, Plaintiff believes it is important for the Court to recognize that in Kinder and Bryant's dealings with Bacal, both Kinder and Bryant dealt with him first personally and the entities he later used after commissioning music were entirely his decision, depending on his needs and wishes.

Thus, these companies were effectively Bacal's alter egos at least in the dealings with Plaintiff.

10. The Court has already ruled that Plaintiff can make a case against Bacal for a special confidential relationship and, notwithstanding any settlement with Bacal, Plaintiff can make the same case against non-settling defendant Sunbow which was owned and controlled by Bacal.³

11. Plaintiff testified that she dealt with Bacal personally and it was he who hired her. The testimony about the unity of interest of Bacal and his entities Sunbow, Starwild, Wildstar and GBI was corroborated by Kinder's testimony in August of 2006 and indeed in several respects by Sunbow's own representatives Weitzman and Bacal.

12. This Court has already held that Bacal and Plaintiff had a fiduciary relationship and it follows necessarily that by the testimony of Kinder, Bacal and Weitzman, Plaintiff can establish a fiduciary relationship with Sunbow through Bacal. And it is without dispute that it was Sunbow which filed the incorrect BMI registrations and diminished plaintiff's shares and credits for all these

³ See Decision and Order erroneously dated February 25, 2003 at page 7.

years [considerably in excess of \$238,000 worth of broadcast performance royalties as of 2000 as set forth in this Court's Decision dated May 26, 2004] and further deprived her of her writer's share of music publishing monies-breaching that relationship.

13. The Court has already held:

"If Plaintiff is able to establish that Bacal's relationship with his company Sunbow had been such that he had exercised such complete domination and control thereof that it may be said that the corporation was in reality a shell or dummy corporation for Bacal's own purposes, then the Court fails to see why the Court, to achieve justice, should not permit Plaintiff in essence to *pierce the corporate veil*, find such an identity between Bacal and Sunbow that Bacal's [fiduciary] relationship with Plaintiff is the same as Sunbow's relationship to Plaintiff, and thereby permit Plaintiff to recover any financial benefit that has been wrongfully conferred upon Sunbow." Decision and Order dated May 26, 2004 quoting Decision and Order erroneously dated February 25, 2003 at page 17.

14. The Court should not backtrack and ignore its own rulings and must allow the testimony of Kinder, Bacal and Weitzman to establish Bacal's unity of interest and relationship with Sunbow.

KINDER'S DE BENE ESSE TESTIMONY

15. The following cites are to portions of the sworn testimony of Kinder on the issue:

KINDER TESTIMONY

(transcript annexed hereto as Exhibit "A")

- A. GBI and Sunbow were essentially the same entity.
Page 29, Lines 7 - 11
- B. GBI was an ad agency for Hasbro and Sunbow was the spin-off for production of cartoon shows "but they were very intertwined." Page 34 and 35, Lines 18-4.
- C. Writers could not tell the difference between GBI and Sunbow or whether they were being hired by Sunbow or GBI because "the people hiring us were the same. Joe Bacal and the writers from Sunbow were the same as the people from GBI. There was no differentiation." Page 35, Lines 12-17
- D. Joe Bacal represented Griffin Bacal, Inc. and Sunbow. Page 37, Lines 12 and 13.

Carol Weitzman, whom Sunbow has assiduously avoided producing as a witness for obvious reasons, also gave relevant testimony:

WEITZMAN TESTIMONY

(Transcript attached as Exhibit "B")

- A. "...Joe Bacal owned Sunbow. Page 9, Lines 12-18.
- B. "...[Griffin and] Joe Bacal were in command at Sunbow. Page 18, Lines 22-25.

DOBISHINSKI WAS NOT PLAINTIFF'S AGENT

- C. Sunbow hired Bill Dobishinski to administer Sunbow's publishing rights⁴. Page 33, Lines 6-10.
- D. Tom Griffin and Joe Bacal were responsible for all of the percentage allocations. Pages 41-42, Lines 21-17 and Page 49, Lines 6-18.
- E. The information on the Sunbow cue sheets came from Tom and Joe [Bacal]. Page 52, Lines 11-19.
- F. Joe and Tom made all the deals for Sunbow. Page 82, Lines 1-14.

Jules M. "Joe" Bacal also gave relevant testimony as to these issues:

BACAL TESTIMONY (Exhibit "C")

- A. Bacal admitted he owned Sunbow who "controlled" Starwild and Wildstar. Pages 25-26, Lines, 18-10.

BACAL ON WHO HIRED DOBISHINSKI

- B. Bacal admitted he and Sunbow hired Dobishinski who handled the publishing rights [which included plaintiff's rights] for Sunbow:

Q. I understand.

- A. It just happened, but we did hire an expert and that was Bill. And I do believe that the composers were all

⁴ In the last argument on December 11, 2006 the Court [apparently with Sunbow's last faxed submission in mind which included a letter from Dobishinski to Harris dated March 3, 1986] engaged in an exchange with counsel about the JEM agreement negotiations suggesting that Plaintiff [through her alleged lawyer Dobishinski] had not obtained rights she sought. This is dead wrong because Dobishinski was Sunbow's agent, as testified to by both Weitzman and Bacal, and because this letter, which was one of many in a two year negotiation process, was written more than a year before Kinder & Bryant signed the final JEM agreement [in 1987- despite its 1985 backdate] which did provide for those music publishing royalties.

encouraged to work with him and I guess it was Ford who worked with him to my understanding, because he was the person, really, to handle those kinds of things with Anne and Kinder Bryant.

(Exhibit C, Bacal Testimony, November 15, 2001, Page 48, Lines 3-10).

II. Sunbow Was Responsible For The Alteration of BMI Registrations That Led To Plaintiff's Diminished Writer's Share Of The Public Performance Royalties and Sunbow Has Not Paid The Writers' Share of the Music Publishing Money

16. It is without dispute that cue sheets were the vehicle used here to make changes to Plaintiff's BMI catalog.

17. Generally cue sheets list among other things: (a) the television producer for the episode in question; (b) the air date for the episode; (c) the title given to each of the musical compositions used in the episode; (d) the writer(s) and publisher(s) of each individual composition used in the episode; and (e) their respective shares of the public performance royalties for each such project as discussed in the September 30, 2003 Affidavit of Alison Smith at Paragraph 7.

18. Coincidentally, Jules M. "Joe" Bacal was credited as the Executive Producer on the Transformers Video.⁵ Clearly, Bacal as Executive Producer of the Transformers videos and as Co-Chairman of Sunbow has some responsibility for the diminished percentages submitted on the cue sheets to BMI for Plaintiff's compositions.

19. Moreover, Kinder, Weitzman and Bacal can also offer some insight as to how these diminished percentages came to be:

KINDER TESTIMONY (Exhibit "A")

- A. Kinder, had nothing to do with the changes in the registrations and those were not the percentages that he agreed to. Page 31, Lines 13-15.
- B. Kinder has no idea who it was gave him, Kinder, an 83.4% and Ms. Bryant only an 8.3% interest in the Transformers music. Page 31, Lines 1-12.
- C. Sunbow and Starwild had the responsibility for advising BMI as to the allocation of contributions and credits. Page 30, Lines 20-24.
- D. As individual writers (represented by Kinder Bryant), they personally retained all of the writer's share of the music publishing in any work that was created (this included all royalties). Page 44 Lines 20-22 and Page 45, Line 10.
- E. Kinder and Bryant were very protective of their rights (mostly for future possible uses of those creations). Page 46, Line 1-4.

⁵ See Full Cast and Crew IMDB listings of "JEM," "InHumanoids," "My Little Pony: The Movie," "The Transformers: The Movie," "The Great Space Coaster," and "Robotix" wherein Joe Bacal is listed as Producer; See copies of IMDB listings annexed hereto as Exhibit "D."

- F. Paragraph 6 of the JEM Agreement (Trial Exhibit M in evidence) reflects his understanding that Kinder and Bryant "would receive payment for future uses of this product for whatever it was used for in the future." Page 55, Lines 19-23.
- G. Neither Plaintiff nor Kinder [the writers] nor Kinder Bryant, Ltd. [the writers' production company] has ever received any music publishing payments [generated] from the sale of VHS, DVD and CD products embodying the music they composed [originally for television broadcast] for Transformers, GI Joe, Inhumanoids, the JEM Show, Visionairies, My Little Pony and Friends or Robotix "No payments." Page 56, Lines 16-22.

BACAL TESTIMONY (Exhibit "C")

- A. Bacal did not know how Kinder received 83.4% and Anne received 8.3%, "...that doesn't make sense." Page 59, Lines 2-24.
- B. Bacal had no idea why the percentages paid to the original writers on the Transformers opening theme were altered from the original percentages. Page 124, Lines 2-14.
- C. Bacal did not know who provided clearance information to Sony [regarding Plaintiff's percentage share]. Page 137, Lines 15-20.

WEITZMAN TESTIMONY (Exhibit "B")

- A. Tom or Joe [Bacal] provided authorship information on cue sheets that were submitted to BMI. Page 33, Line 6-10.
- B. The music deals were worked out with Tom and Joe [Bacal]. Pages 41-42, Lines 21-3.
- C. Tom Griffin and Joe Bacal were responsible for the percentage allocations on the cue sheets. Page 42, Lines 4-17.

- D. Tom and Joe [Bacal] were responsible in the deals with Anne Bryant's compositions. Pages 45-46, Lines 22-15.
- E. Tom or Joe did the contracts that gave the percentages. Page 49, Lines 5-18.

The Court has already found Prima Facie Evidence of \$238,000 of Wrongfully Withheld BMI Performance Royalties

20. \$238,000 represents an incomplete accounting of royalties wrongfully diverted to Kinder and Bacal and third party writers [unknown] up to year 2000. Many statements that are needed for a complete accounting up until year 2000 are missing. [More than 20% are missing]. To date, Plaintiff's damages continue. Since this trial began six years ago, Plaintiff has been further damaged by the inaction and delays caused by the Court. Twenty-nine BMI payment quarters have passed since this trial began. Plaintiff's damages continue to increase, in part, because:

- No accountings have been ordered by the Court;
- Defendant BMI has still not completed correcting its records in accord with the Bacal and Kinder settlements;
- In the matter of her valuable TRANSFORMERS title, for example, until recently, Plaintiff continued to be paid at diminished rates as low as 8% in lieu of the 100% share that Plaintiff was entitled to until her 2006 settlement with

former Defendant Ford Kinder. Yet, while these corrections must be made to BMI's records, it is essential that the Court understands that the bulk of the royalties for the TRANSFORMERS THEME have been diverted to BMI and ASCAP third party authors [unknown] through a continual stream of additional registrations by the Publisher of this theme music which was composed by Plaintiff in 1983 and registered to her at BMI all along. See additional "writers" listed under Plaintiff's compositions in Exhibit "E"

- Most importantly, Defendant BMI has not been forthcoming with the names of these third party authors, unknown to the Plaintiff, that are collecting the vast majority of royalties for her TRANSFORMERS theme;

21. Sunbow submitted cue-sheets to BMI that altered the percentage allocation of Plaintiff's public performance right publishing shares in favor of other parties and Bacal himself. Plaintiff is prepared to submit these cue sheets submitted by Sunbow that altered Plaintiff's percentages of authorship; all of which were authorized by Carole Weitzman.

BMI'S SEE NO EVIL HEAR NO EVIL DEFENSE DOES NOT FLY

22. As the Court is aware, this action is against not only Sunbow but also BMI. As plead in the Complaint, BMI breached its responsibility to Plaintiff by:

A. breaching the terms of the agreement between Plaintiff and BMI;

- B. failing to prevent unauthorized "writer changes" by allowing continual re-registrations of an existing BMI titles; and
- C. failing to protect Plaintiff's interest in her BMI titles [by allowing ASCAP to claim and distribute royalties for Plaintiff's titles their ASCAP writers].
- D. failing to collect and distribute the royalties due to Plaintiff [from all broadcast sources, including from three daily television series airing since year 2000];

23. The standard BMI form agreement, dated August 24, 1971, between Plaintiff and BMI expressly states that BMI shall furnish statements to Plaintiff at least twice during each year... [of the relevant period]... Although Plaintiff is in receipt of statements, these statements do not fully account for all royalties due to Plaintiff. See Exhibit "1" in Evidence at Trial at Paragraph 7.

24. In addition, the aforementioned standard BMI agreement contains a clause wherein BMI has the right to withhold payment of all sums due to Plaintiff upon notification to BMI or any of its licensees of a claim with

respect to any of Plaintiff's works. This paragraph includes a warranty from the Plaintiff that all works submitted are original. See Exhibit "1" in Evidence at Trial at Paragraph 10.

25. Since at least 2000, BMI has been on notice of a claim against the compositions that are at issue in this action. BMI has continued to pay known and unknown third parties Plaintiff's share of public performance royalties for said compositions, despite Plaintiff's attempts to resolve these issues. As such, BMI has failed to withhold the appropriate funds due to Plaintiff and has further breached its agreement with Plaintiff.

26. BMI's multitude of breaches has resulted in a significant loss of income and has decreased the value of Plaintiff's BMI catalog.

27. BMI had an obligation to protect Plaintiff, its own writer-member, from later alterations of her percentage allocations because, of among other things, the fact that in every contract there is a covenant of good faith and fair

dealing which encompasses any promises that a reasonable promisee would understand to be included.⁶

28. Brian McLaughlin, Director of Special Research at BMI, testified that there is no method in place at BMI to verify the veracity of information submitted by publishers on cue sheets and/or jingle data sheets.

Q: Well, what systems, if any, are in place at BMI to make sure that the information in these forms is accurate?

A: Only the information submitted by the publisher, sir.

Q: Is there any system of verification, any check or balance, at BMI that you are aware of to verify that the information being submitted by a writer or publisher is accurate?

A: No, sir.

June 30, 2003 - Brian McLaughlin (BMI) Deposition at pages 73-74, Lines 19-9.

29. Without verifying any of the information, BMI is left to rely upon information submitted by publishers, even if the information submitted is intentionally inaccurate thereby resulting in diminished percentages for subsequent re-registrations of Plaintiff's compositions by Sunbow through BMI.

⁶ See *Dalton v Educational Testing Servs.*, 87 N.Y.2d 384, 639 N.Y.S.2d 977, 663 N.E.2d 289;

30. BMI's failure to protect Plaintiff's public performance interests in her compositions amounts to a clear violation of the covenant implicit if not explicit in the BMI agreement.

31. BMI's defense, that the burden placed upon it would be too great if it were to make a determination as to whether a cue sheet reflected an original work, a modified version or a brand new work unrelated to the original because it represents hundreds of thousands of other songwriters, composers and music publishers, is disingenuous.

32. In fact, BMI must make decisions on who to protect and who not to protect. BMI claims that it will not "...take steps to secure additional royalties on... [Plaintiff's]... behalf... [because]...such steps would have been adverse to the rights of other BMI affiliated songwriters, composers, and music publishers..." See BMI Reply Memorandum in Further Support of Defendant's Motion to Dismiss at Page 3. However, this is obviously untrue as BMI has chosen the subsequent "writers" listed on the cue sheets as the parties whom they sought to protect to Plaintiff's detriment by continuing to pay out royalties to unknown third parties for

the invalid registrations of Plaintiff's compositions. BMI is thus accountable.

33. Accordingly, BMI's breach of the agreement in effect between Plaintiff and BMI has resulted in unspecified damages that would require a full accounting of all payments made to all parties for Plaintiff's compositions.

KINDER'S TESTIMONY ON ISSUE OF BMI RESPONSIBILITY

34. As the Court may recall, Plaintiff's testimony and belief has always been that BMI, as a performing rights society, was under an obligation to protect Plaintiff's performing rights.

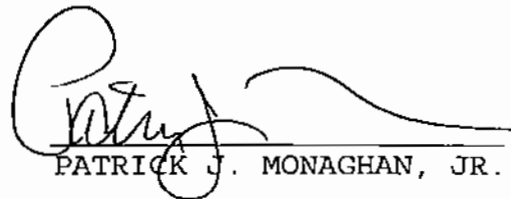
35. Kinder's testimony supported Plaintiff's understanding. Kinder testified under oath that it was his understanding that BMI would protect his rights under the agreement and ensure that "...no changes could be made to authorship [of his compositions] without written permission from all parties..." See Exhibit "A" at page 20. Plaintiff testified to the same as did her expert, David Berman.

CONCLUSION

36. According to the November 2, 2006 Order and Decision of this Court, both sides will be given ample time to put on their cases. After approximately six years, Plaintiff has had her hours of Court time spread over the course of several days over two and one half years. Plaintiff is not asking for anything more than to what the Court said she is already entitled. Plaintiff must be allowed to continue, without further delay and interruption.

37. For the foregoing reasons, Plaintiff's motion must be granted and the testimony of Kinder, Bacal, and Weitzman must be allowed and the trial continued.

New York, New York
January 23, 2007



PATRICK J. MONAGHAN, JR.

<p>1 SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ROCKLAND FLORIDA</p> <p>2 HON. ANDREW P. O'ROURKE</p> <p>3</p> <p>4 ANNE BRYANT, 5 Plaintiff. Index No. 5192/00</p> <p>6 v.</p> <p>7 BROADCAST MUSIC, INC. (a/k/a "BMI"), FORD KINDER, KINDER & CO., LTD., VADIVOX, INC., JULES M. "JOE" 8 BACAL, GRIFFIN BACAL, INC., STARWILD MUSIC BMI, WILDSTAR MUSIC ASCAP, SUNBOW PRODUCTIONS, INC., 9 Defendants.</p> <p>10 -----x</p> <p>11 ANNE BRYANT, 12 Plaintiff. Index No. 2821/02</p> <p>13 v.</p> <p>14 SUNBOW PRODUCTIONS, INC., 15 Defendant.</p> <p>16 -----x</p> <p>17 19 West Flagler Street Miami, Florida 18 August 9, 2006 8:50 a.m. - 4:25 p.m.</p> <p>19</p> <p>20 DEPOSITION OF DR. CLIFFORD KINDER</p> <p>21</p> <p>22 Taken before Dina Amato, Certified Shorthand 23 Reporter, and Notary Public for the State of Florida 24 at Large, pursuant to Notice of Taking Deposition 25 filed in the above cause.</p>	<p>1 (EXHIBIT-1 MARKED FOR IDENTIFICATION)</p> <p>2 Thereupon--</p> <p>3 DR. CLIFFORD KINDER</p> <p>4 was called as a witness by the Plaintiff and, having 5 been first duly sworn, testified as follows:</p> <p>6</p> <p>7 MS. PHARES: Before we get started, I just 8 want to state for the record that this is a one 9 day deposition of Dr. Kinder and as we -- I 10 have mentioned to Mr. Monaghan before, if there 11 is insufficient opportunity for all parties to 12 conduct cross, that we will object to the 13 admission of the deposition at any trial.</p> <p>14 MR. MONAGHAN: My silence shouldn't be 15 deemed acquiescence that you won't have an 16 adequate opportunity for cross-examination but 17 what is adequate may be in the mind of whoever 18 wants to raise the point.</p> <p>19 So I think we'll cross that bridge when we 20 come to it. We're going to do the best we can to 21 complete the examination so that you'll have 22 sufficient time for cross.</p> <p>23 DIRECT EXAMINATION</p> <p>24 BY MR. MONAGHAN:</p> <p>25 Q. Good morning, Dr. Kinder.</p>
<p>1 APPEARANCES</p> <p>2 PATRICK J. MONAGHAN, ESQ., of the firm of 3 MONAGHAN, MONAGHAN, LAMB & MARCHISIO, on behalf of the Plaintiff.</p> <p>4 GLORIA C. PHARES, ESQ., of the firm of 5 PATTERSON, BELKNAP, WEBB & TYLER, on behalf of the Defendant, Sunbow.</p> <p>6 JUDITH, M. SAFFER, ESQ., of BROADCAST MUSIC, 7 INC., on behalf of BMI.</p> <p>8 ALSO PRESENT: ANNE BRYANT</p> <p>9</p> <p>10</p> <p>11</p> <p>12 INDEX</p> <p>13 Witness Direct Cross Redirect Recross</p> <p>14 DR. CLIFFORD KINDER 3 87-103 180 184</p> <p>15</p> <p>16</p> <p>17</p> <p>18 EXHIBITS</p> <p>19 KINDER'S For Ident.</p> <p>20</p> <p>21 1 3</p> <p>22 2 10</p> <p>23 3 10</p> <p>24 4 22</p> <p>25 5 58</p> <p>26 6 71</p> <p>27 7 72</p> <p>28 8 84</p> <p>29 9 96</p>	<p>1 A. Good morning.</p> <p>2 Q. My name is Patrick Monaghan, as has been 3 indicated, I represent Ann Bryant, the plaintiff in 4 this case. Now this is a videotaped deposition. There 5 will be a transcription of the questions, answers and 6 colloquy that's on the record made by the court 7 reporter. You are also being videotaped.</p> <p>8 The deposition may be used in the court 9 proceeding with which we are involved for whatever 10 purposes the rules of the court allow. I'm going to 11 be asking the questions. The court reporter is going 12 to be transcribing those questions, your answers and 13 I'm going to ask you to wait until I'm finished with 14 the question before you answer it.</p> <p>15 If you don't understand the question, let 16 me know I'll try and clarify it. The deposition is 17 being conducted pursuant to a court order which was 18 entered by Justice O'Rourke. Exhibit-1 is the 19 commission for the deposition to proceed.</p> <p>20 I believe you have seen a copy of this 21 before, have you not?</p> <p>22 A. Yes, I have.</p> <p>23 MS. PHARES: That's your Exhibit-1 for the 24 deposition; is that right?</p> <p>25 MR. MONAGHAN: Let's call them by the</p>

<p>5</p> <p>1 witness's name, Kinder-1. 2 Q. Before we proceed, have we met before? 3 A. Yes. 4 Q. We met last night, did we not? 5 A. We did. 6 Q. Am I representing you to a certain degree 7 in certain matters pertaining to this lawsuit? 8 A. Yes, you are. 9 Q. What might those be? 10 A. I take it to be any overlapping interest 11 that pertain to -- that may benefit me in terms of 12 the work I've performed which is on trial here. 13 Q. Please give the court reporter your 14 residence? 15 A. 6355 LaGorce Drive, Miami Beach, Florida. 16 Q. And do you have a business address as well? 17 A. Yes. 18 Q. What is that? 19 A. That's Mercy Hospital, 3661 South Miami 20 Avenue, Suite 806, Miami, Florida, 33133. 21 Q. And you are a medical doctor, are you not? 22 A. Right. 23 Q. And I would ask you to give your answers 24 either yes or no rather than by a nod because the 25 reporter is not allowed to interpret gestures.</p>	<p>7</p> <p>1 your musical formal training, if any? 2 A. Actually, I grew up in the music business. 3 My parents were both musicians and my father was a 4 composer of music commercials and television, radio 5 station I.D.s, so I started singing commercials when 6 I was eight years old. 7 I started singing the adult commercials 8 when I was 15, wrote my first commercial at 18, 9 studied privately from age six. 10 Q. With whom? 11 A. Many different teachers, did some music in 12 college but in college, focused on pre-med, continued 13 private training. 14 Then when I was about 23 after college went 15 to work at my father's company which was recording 16 studios in Atlanta. We had three 24 track recording 17 studios, originally opened in 1964 as the first eight 18 track studio in Atlanta. 19 So, by the time I was 24, I had been in the 20 business for my whole life. So, I got picked up by a 21 New York music house who gave me a five-year 22 contract, Michlin Company, as a singer composer and 23 things went very well there. 24 Q. Where were they located, Dr. Kinder? 25 A. 41 East 56 Street or something like that.</p>
<p>6</p> <p>1 A. Yes. 2 Q. You're licensed to practice medicine in the 3 State of Florida? 4 A. I am. 5 Q. When did you receive that license? 6 A. '99 I think. 7 Q. And what is the nature of your practice? 8 A. I'm Board certified in family medicine with 9 a subspecialty in HIV care. My practice is 99 percent 10 HIV and AIDS patients. 11 Q. This is done at the Mercy Hospital? 12 A. Yes. 13 Q. Would you give us a brief resume of your 14 education? 15 A. Okay. I did premed at Fordham University in 16 the late 70s. Then was in the music business for a 17 long time. Then I went to medical school in 1991, 18 finished in '96, went to residency at University of 19 South Carolina School of Medicine from '96 to '99 and 20 then started practicing. 21 Q. Since you've been a practicing physician, 22 have you had any involvement in the music business? 23 A. No direct involvement, some consulting, 24 that's all. I haven't had time. 25 Q. Could you also give us a brief resume of</p>	<p>8</p> <p>1 MS. BRYANT: I thought it was 44. 2 MR. MONAGHAN: Anne, you can't do that. 3 A. 56 Street, New York City. 4 Q. And what was the nature of the business of 5 Michlin Company? 6 A. We did music for advertising and some other 7 stuff but mostly music for advertising at that time. 8 Q. Who was the -- who were the principals of 9 Michelin and Company? 10 A. Spencer Michlin was the sole owner and Anne 11 Bryant was the music director and there were two 12 others of us that were staff writers with Anne. 13 Q. Did you have an officership, a title? 14 A. Later, after I was there a couple years, I 15 was made a vice president and had a lot more to do 16 with the business as well as the music. 17 Q. What period of time were you -- for what 18 period of time were you associated with Michlin? 19 A. From '78 to '83. 20 Q. Can you recall the names of some clients of 21 Michelin and Company? 22 A. No. 23 MS. PHARES: Objection, relevance. 24 Q. That's okay. You can answer. 25 A. Pepsi, Mountain Dew, Chevrolet, Hasbro, we</p>

<p>9</p> <p>1 worked -- Proctor & Gambel. We worked for every 2 major advertising agency in New York and, therefore, 3 for almost every big American company. 4 Q. Now, you mentioned Hasbro. Are we talking 5 about the Hasbro toy company? 6 A. Yes. 7 Q. And was the work that was done for Hasbro 8 done directly for that client or for an agency? 9 A. It was done originally for Benton & Bowles 10 who had the Hasbro account and later for Griffin 11 Bacal which took the Hasbro account and opened their 12 own agency. We also worked for other toy companies, 13 Mattel, Fisher Price. 14 Q. This is at Michelin? 15 A. Yes. 16 Q. Did you come to know Joe Bacal during any 17 of these experiences? 18 A. Yes. I met Joe Bacal in about 1979 when he 19 was one of the creative directors at Benton & Bowles 20 Advertising which had the Hasbro account. 21 Q. We'll come back to Mr. Bacal later on. Are 22 you familiar with the concept of a performing rights 23 society? 24 A. Yes. 25 Q. Were you a member of any performing rights</p>	<p>11</p> <p>1 we come to it. I'm happy to provide you with a 2 copy when I can. I don't have it now. I 3 schlepped as much stuff as I could on the trip. 4 I think you gave -- 5 MS. PHARES: I thought you said you were 6 putting these on -- you had scanned these and 7 you've put others -- you've scanned others. 8 MR. MONAGHAN: That's correct. I've scanned 9 others. 10 Q. Dr. Kinder, the reporter has marked as 11 Exhibit-2 a document which is -- has the name 12 Broadcast Music, Inc. on the first page. 13 MS. PHARES: Does it have production 14 numbers, Pat? 15 MR. MONAGHAN: No. 16 MS. PHARES: This is a document you've never 17 produced? 18 MR. MONAGHAN: It's a document I think we 19 got from you among -- 20 MS. PHARES: Does it have Sunbow production 21 numbers on it? 22 MR. MONAGHAN: It does not. At the moment, I 23 don't know where this came from. Can I continue? 24 MS. PHARES: I'd like to know what the 25 document is.</p>
<p>10</p> <p>1 society in the period of time you were at Michlin and 2 Company? 3 A. Yes. At Michlin and, I was a member of 4 ASCAP. 5 Q. And did you ever become a member of another 6 performing arts society? 7 A. Later, it appeared more beneficial for me 8 to be at BMI because their payments for my type of 9 work was better, so I switched to BMI in I think '86 10 or '87. 11 MR. MONAGHAN: Mark this as Exhibit-2. This 12 will be Exhibit-3. 13 (EXHIBITS 2-3 MARKED FOR IDENTIFICATION) 14 MS. PHARES: Do you have a keep of your 15 exhibit? 16 MR. MONAGHAN: I'll provide them afterwards. 17 MS. PHARES: We can't do this unless we can 18 see the exhibit. 19 MR. MONAGHAN: You're welcome to examine it 20 on cross. 21 MS. PHARES: I can't see the exhibit while 22 you are doing the examination. 23 MR. MONAGHAN: You don't have to. 24 MS. PHARES: I may have to, I think I will. 25 MR. MONAGHAN: We'll cross that bridge when</p>	<p>12</p> <p>1 MR. MONAGHAN: It's my belief it's 2 Dr. Kinder's BMI contract, a poor copy. I was 3 going ask Dr. Kinder to see if he can locate a 4 better copy for -- if Judith can locate a better 5 copy -- 6 MS. SAFFER: I believe, and I can answer 7 better if I take a closer look, that that might 8 have come out of BMI's records and given to you 9 and it looks like it's from a microfilm copy 10 which is the way the old records were kept and I 11 may not be able to get a better copy. 12 MR. MONAGHAN: At the moment, I don't know 13 where this came from. 14 MS. SAFFER: Can I take quick look at it? 15 MR. MONAGHAN: Sure. 16 MS. SAFFER: I believe my original 17 assumption is probably correct. I can try to get 18 better copies but chances are they won't be much 19 better. I'll offer for everybody to get the form 20 contract and this doesn't appear to have had any 21 alterations and by using the form of the 22 contract, I can get one that's legible. 23 MR. MONAGHAN: Just for the record, Judy, it 24 appears to be exactly the same as trial 25 Exhibit-1 which was Anne's BMI contract and it</p>

<p style="text-align: right;">13</p> <p>1 appears to be the same as Joe Bacal's.</p> <p>2 MS. PHARES: For the record, it is almost</p> <p>3 totally illegible and in fact on some of these</p> <p>4 pages, there's no writing at all. So I don't</p> <p>5 know how you can make that representation but</p> <p>6 perhaps Judy can find you another copy.</p> <p>7 MR. MONAGHAN: That's what I'm going to go</p> <p>8 through with the witness. I think I'm going to</p> <p>9 establish that it's the same.</p> <p>10 Q. Dr. Kinder, you have in front of you</p> <p>11 Exhibit-2 for identification, Exhibit-3 for</p> <p>12 identification which will you agree with me bears the</p> <p>13 name Jules and Michael Bacal, Broadcast Music, Inc.</p> <p>14 on the letterhead, April 7, 1988 as the date?</p> <p>15 A. Yes, it does.</p> <p>16 MS. SAFFER: Excuse me. Bacal's is what</p> <p>17 date?</p> <p>18 MR. MONAGHAN: April 7, 1988.</p> <p>19 MS. PHARES: So Exhibit-3 is Bacal's?</p> <p>20 MR. MONAGHAN: BMI contract. We'll make</p> <p>21 copies of this at the next break.</p> <p>22 Q. Showing you now Miss Bryant's BMI contract</p> <p>23 which was Plaintiff's-1 in evidence at the trial. So,</p> <p>24 before you now, you have all three of these BMI</p> <p>25 agreements and Ms. Saffer has volunteered to attempt</p>	<p style="text-align: right;">15</p> <p>1 MS. PHARES: So we're talking 15 years apart</p> <p>2 or something to that effect, correct?</p> <p>3 MR. MONAGHAN: Right.</p> <p>4 Q. Would you agree with me, Dr. Kinder, and</p> <p>5 counsel can disagree, they are free to do that, that</p> <p>6 the first pages of each of these exhibits appear to</p> <p>7 be the same by looking at, for example, the words on</p> <p>8 the parameter?</p> <p>9 MS. PHARES: Objection. Is there a</p> <p>10 question?</p> <p>11 MR. MONAGHAN: Would you agree with me that</p> <p>12 they appear to be the same is the question.</p> <p>13 A. They appear --</p> <p>14 MR. MONAGHAN: We'll have a long day.</p> <p>15 MS. PHARES: Yes, I know that.</p> <p>16 A. They appear to be similar but I can't --</p> <p>17 Q. Do you see the word performance on</p> <p>18 Exhibit-3 on the bottom right?</p> <p>19 A. Yes.</p> <p>20 Q. Do you see the word performance on the</p> <p>21 bottom?</p> <p>22 A. These two appear to be the same and this</p> <p>23 one appears to be similar.</p> <p>24 Q. Okay.</p> <p>25 MS. SAFFER: Which -- I couldn't tell what</p>
<p style="text-align: right;">14</p> <p>1 to get a clean copy of the form.</p> <p>2 MS. SAFFER: What is the date of each one of</p> <p>3 these contracts and the reason I ask is that</p> <p>4 from time to time, the form of agreement</p> <p>5 changed. If they are all on or about the same</p> <p>6 date, it's a fair assumption that it is the same</p> <p>7 contract. If they are several years apart, it</p> <p>8 may be a different contract.</p> <p>9 MR. MONAGHAN: Understood.</p> <p>10 MS. SAFFER: Which is substantially similar</p> <p>11 but may have some different provisions.</p> <p>12 MR. MONAGHAN: I understand. I don't think</p> <p>13 that's the case as I'm about to point out.</p> <p>14 Q. I'm directing your attention to the most</p> <p>15 legible of the three which is Plaintiff's-1 in</p> <p>16 evidence at trial consisting of four pages and</p> <p>17 comparing that --</p> <p>18 MS. PHARES: Dated?</p> <p>19 MR. MONAGHAN: August 24, 1971.</p> <p>20 Q. Comparing that to your contract -- what</p> <p>21 appears to be your contract which -- the date of</p> <p>22 which we can't make out at the moment.</p> <p>23 MS. PHARES: Some time in the late 80s</p> <p>24 according to the deposition.</p> <p>25 MR. MONAGHAN: Yeah.</p>	<p style="text-align: right;">16</p> <p>1 he was talking about.</p> <p>2 A. The Bacal and Kinder ones appear to be the</p> <p>3 same and the Bryant one seems to be similar.</p> <p>4 MS. SAFFER: The Ford agreement is in the</p> <p>5 late 80s and the Bacal agreement is 1988. I'm</p> <p>6 not trying put words in your mouth. I'm asking.</p> <p>7 A. Yes.</p> <p>8 Q. And would you agree with me that the second</p> <p>9 page of exhibits two and three, Kinder two and three</p> <p>10 appear to be the same judging by the words on the</p> <p>11 parameter?</p> <p>12 MS. PHARES: Objection, leading.</p> <p>13 A. They appear to be the same.</p> <p>14 MR. MONAGHAN: If I had a clean copy,</p> <p>15 believe me, I'd be examining about it.</p> <p>16 MS. SAFFER: Would it be helpful in an</p> <p>17 effort to move this along, if I called my office</p> <p>18 and asked to get faxed here the form of</p> <p>19 agreement that was offered to writers at that</p> <p>20 period of time and then we would have a legible</p> <p>21 agreement I hope?</p> <p>22 MR. MONAGHAN: That's fine if we can do that</p> <p>23 at a break.</p> <p>24 MS. SAFFER: It won't be the actual</p> <p>25 agreement. It will be the form of agreement in</p>

<p>17</p> <p>1 the late 80s.</p> <p>2 MR. MONAGHAN: That would be fine if we can</p> <p>3 do that at a break. I'm actually going to ask</p> <p>4 about only one paragraph of this agreement.</p> <p>5 Q. The last page of what we've -- I've been</p> <p>6 describing as your agreement is almost totally</p> <p>7 illegible and it's not very legible on Exhibit-3</p> <p>8 either, but superficially, it does appear to be the</p> <p>9 same, would you agree?</p> <p>10 A. I agree.</p> <p>11 Q. Now, I want to direct your attention to</p> <p>12 paragraph 11 of the most legible of these exhibits</p> <p>13 which is Miss Bryant's trial Exhibit-1, the BMI</p> <p>14 agreement, August 24, 1971. I'm placing that before</p> <p>15 you now.</p> <p>16 Would you be good enough to read into the</p> <p>17 record, sir, paragraph 11?</p> <p>18 MS. SAFFER: He is being asked to read</p> <p>19 paragraph 11 from Anne Bryant's contract which</p> <p>20 is dated 1971 which may or may not be the same</p> <p>21 as the paragraph in his agreement which was from</p> <p>22 the late 80s, which may or may not be affected</p> <p>23 by other terms in the agreement which is right</p> <p>24 now illegible? The copy you have is illegible.</p> <p>25 MR. MONAGHAN: May or may not is the key</p>	<p>19</p> <p>1 process at all?</p> <p>2 A. Yes.</p> <p>3 Q. How does it work as you understand it?</p> <p>4 A. I think there were a couple ways. One, I</p> <p>5 could register send them in with cards that they had</p> <p>6 provided to us. The main way we did it was the</p> <p>7 publishing company sent cue sheets showing authorship</p> <p>8 and, frankly, we never saw them.</p> <p>9 MS. PHARES: Just for clarification, what</p> <p>10 period of time are we talking about when you</p> <p>11 refer to company?--</p> <p>12 THE WITNESS: I'm talking about Wildstar</p> <p>13 Music and Starwild Music which are publishing</p> <p>14 companies with Sunbow Productions and starting</p> <p>15 from '84 through about '91.</p> <p>16 Q. Okay.</p> <p>17 A. Maybe '83.</p> <p>18 Q. What was your understanding -- you've just</p> <p>19 read that paragraph.</p> <p>20 What was your understanding of what BMI was</p> <p>21 supposed to do when a registration of a composition</p> <p>22 was submitted to it?</p> <p>23 MS. SAFFER: Objection. The contract speaks</p> <p>24 for itself. The language is there, it's in</p> <p>25 evidence. The Judge can interpret what it may</p>
<p>18</p> <p>1 phrase.</p> <p>2 MS. SAFFER: That's right.</p> <p>3 Q. If you could read that out loud,</p> <p>4 Dr. Kinder?</p> <p>5 A. "We shall have the right upon written</p> <p>6 notice to you to exclude from this agreement at any</p> <p>7 time any work which in our opinion is similar to a</p> <p>8 previously existing composition and might constitute</p> <p>9 a copyright infringement or has a title or music or</p> <p>10 lyric similar to that of a previously existing</p> <p>11 composition and might lead to a claim of unfair</p> <p>12 competition or is offensive, in bad taste or against</p> <p>13 public morals or is not reasonably suited for</p> <p>14 performance." Do you want A, B and C?</p> <p>15 Q. I think that's the last part of that, isn't</p> <p>16 it?</p> <p>17 A. A, B and C.</p> <p>18 Q. That's all I'd ask you to read. Now, you</p> <p>19 don't know if you have a better copy of your</p> <p>20 agreement, is that correct?</p> <p>21 A. It's unlikely that I do.</p> <p>22 Q. Did there come a time when you actually had</p> <p>23 some songs registered in your name at BMI?</p> <p>24 A. Yes.</p> <p>25 Q. Are you familiar with the song registration</p>	<p>20</p> <p>1 mean or what the relevance is, etc., plus the</p> <p>2 fact he's not reading from his own contract.</p> <p>3 He's reading from somebody else's contract so</p> <p>4 you're asking him to give, at best, a legal</p> <p>5 opinion. I think it's inappropriate.</p> <p>6 MR. MONAGHAN: I think you misunderstood my</p> <p>7 question. I simply asked him for his</p> <p>8 understanding of what BMI was supposed to do</p> <p>9 when a composition was registered.</p> <p>10 A. My understanding was this and it started</p> <p>11 with ASCAP and it continued with BMI and what was</p> <p>12 explained to me --</p> <p>13 MS. SAFFER: Excuse me, ASCAP and BMI are</p> <p>14 two separate companies. If you are going to --</p> <p>15 you should differentiate if you are going to</p> <p>16 give an opinion what ASCAP told you.</p> <p>17 A. My understanding is that they would protect</p> <p>18 my copyright and my authorship, represent me for</p> <p>19 broadcasting, plays or other media and process the</p> <p>20 monies so that I would receive my writer's share. It</p> <p>21 was also my understanding that no changes could be</p> <p>22 made to an authorship without written permission from</p> <p>23 all parties involved and even that -- whoever the</p> <p>24 original authors or a piece of music were, generally</p> <p>25 it would retain that way.</p>

<p style="text-align: right;">21</p> <p>1 For instance, when Weird Al did the spoof 2 songs of Michael Jackson, that Michael Jackson would 3 have -- he would retain full publishing rights to 4 that, even though the lyrics were changed. 5 So my understanding is that BMI represented 6 me to protect my copyright, to administer the 7 payments to me through uses of those works. 8 Q. We're talking about public performance 9 royalties? 10 A. Yes. 11 Q. And just for the record, could you define 12 what you understand those royalties to be, that type 13 of royalty, public performance royalty? 14 A. Writer's share for broadcast, phono 15 records, DVDs, sheet music, mechanicals. 16 Q. When is the earliest time you had this 17 understanding of what BMI was supposed to do as far 18 as you understood? 19 A. Before I signed my contract. 20 Q. And do you still have that understanding as 21 of today? 22 A. I still think that's how I would read the 23 contract although that isn't exactly what's taken 24 place. 25 Q. Are you familiar with the term publisher as</p>	<p style="text-align: right;">23</p> <p>1 MS. PHARES: I beg your pardon. Are you 2 referring to Exhibit-2 or Kinder-4? 3 Q. Exhibit-4, thank you very much. Exhibit-4. 4 The page from trial Exhibit-2, do you have that 5 before you? 6 A. Yes, I do. 7 Q. What compositions are reflected on this 8 page? 9 A. Transformers opening theme, it looks like 10 three versions, and the title song Truly Outrageous 11 from the TV Jem show. 12 Q. Are you able to identify from your own 13 independent knowledge what this document -- what type 14 of document this is? 15 A. Yes, I am. 16 Q. And what is it? 17 A. It's a listing of -- from BMI of the 18 writer's share percentages for each person and for 19 the publisher. 20 Q. Do you know this to be a page from Anne 21 Bryant's catalog? 22 A. It appears to be that, yes. 23 MS. PHARES: Objection, foundation. 24 MR. MONAGHAN: What's the -- never mind. 25 Q. You recognize this, do you not, Dr. Kinder?</p>
<p style="text-align: right;">22</p> <p>1 it's used in the music business? I think you've used 2 it already. 3 A. Yes. 4 Q. What does that mean? 5 A. The publisher is the administrator of the 6 musical composition who essentially sort of like the 7 business person, they make the deals to get the music 8 used in different media. 9 Q. And when you use the word media, what are 10 you talking about? 11 A. Television, movies, phono records, now ring 12 tones. I have to apologize if some of my language 13 isn't the music business language because it's been a 14 long time since I was active in that. 15 MR. MONAGHAN: Mark this please, Dina, as 16 the next exhibit? 17 (EXHIBIT-4 MARKED FOR IDENTIFICATION) 18 Q. It's a page from the BMI catalog. I 19 represent that this is -- rather than mark the entire 20 exhibit, this is page 72 from trial Exhibit-2 in the 21 trial of this action which is Anne Bryant's BMI 22 catalog dated March 16th, 2000. 23 Have you got Exhibit-2 before you, 24 Dr. Kinder? 25 A. Yes, I do.</p>	<p style="text-align: right;">24</p> <p>1 A. Yes, I do. 2 Q. This is, in fact, page 72 from Anne 3 Bryant's catalog as of March 16, 2000? You have to 4 answer verbally. 5 A. Yes. 6 Q. You've seen runs like this or catalogs like 7 this before? 8 A. Yes, I have. 9 Q. Have you seen a catalog like this for your 10 own songs? 11 A. Yes, I have. 12 Q. Have you seen a catalog like this for other 13 songwriters who are BMI writers? 14 A. No. 15 Q. Okay. So the only two you would be familiar 16 with would be your own and Anne's? 17 A. Yes. 18 Q. Have you seen any catalogs similar to this 19 with respect to the publisher, Wildstar or Starwild? 20 A. I have not seen that catalog. 21 Q. Now, directing your attention to Exhibit-4 22 in the first composition titled Transformers Theme 23 Open, do you see that reference? 24 A. The one at the top? 25 Q. Right.</p>

<p>25</p> <p>1 A. Yes.</p> <p>2 Q. And you see there's a column for a</p> <p>3 participant?</p> <p>4 A. Exactly.</p> <p>5 Q. And the participants are Joe Bacal, Anne</p> <p>6 Bryant, Ford Kinder, Starwild Music Inc., correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the total of the shares here equals 200.</p> <p>9 percent, does it not?</p> <p>10 A. Does it.</p> <p>11 Q. Is that your understanding of how the</p> <p>12 system worked?</p> <p>13 A. Yes.</p> <p>14 Q. And then the Starwild Music Inc. is shown</p> <p>15 as having a 100 percent share, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And do you know what is Starwild Music Inc.</p> <p>18 to this composition?</p> <p>19 A. Starwild Music Inc. is the publisher of</p> <p>20 record for the Transformers theme.</p> <p>21 Q. Now, next to Joe Bacal, am I correct the</p> <p>22 designation P appears next or on the same line as</p> <p>23 Starwild Music Inc.?</p> <p>24 A. Yes.</p> <p>25 Q. And that signifies publisher, does it not?</p>	<p>27</p> <p>1 Q. With the writer's share. And the 83.4 and</p> <p>2 the 8.3 and 8.3 next to your name and Joe Bacal's</p> <p>3 name respectively would add up to the other hundred</p> <p>4 percent?</p> <p>5 A. That's right.</p> <p>6 Q. Do you know how it is these percentages</p> <p>7 came to be on the records at BMI in the period of</p> <p>8 March 16, 2000?</p> <p>9 A. I have no idea.</p> <p>10 Q. Did you, sir, cause those registrations to</p> <p>11 be made in that fashion to ascribe those percentages</p> <p>12 to the individuals indicated?</p> <p>13 A. I had nothing to do with it and I was not</p> <p>14 made aware of it.</p> <p>15 Q. When is the first time that you learned</p> <p>16 that BMI was reflecting -- withdrawn.</p> <p>17 Who composed the Transformers?</p> <p>18 A. The music was composed by Anne Bryant.</p> <p>19 Q. And the lyrics?</p> <p>20 A. Lyrics were composed by Joe Bacal and me.</p> <p>21 Q. And with respect to -- I'll take the</p> <p>22 opportunity now to ask this question.</p> <p>23 What was -- did you have familiarity with</p> <p>24 any understanding between Mr. Bacal and -- who was</p> <p>25 Mr. Bacal by the way?</p>
<p>26</p> <p>1 A. It does.</p> <p>2 Q. And BMI next to it signifies the</p> <p>3 affiliation that publisher has with respect to this</p> <p>4 composition?</p> <p>5 A. That's correct.</p> <p>6 Q. Now, above that reference is Mr. Bacal's</p> <p>7 name, Miss Bryant's name and your own name, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And there are various account numbers shown</p> <p>10 there?</p> <p>11 A. Right.</p> <p>12 Q. Am I correct?</p> <p>13 A. Uh huh.</p> <p>14 Q. I wouldn't put you to the test, but do you</p> <p>15 have any reason to believe this isn't an accurate</p> <p>16 reflection of your account number?</p> <p>17 A. I have no reason to think it would not be</p> <p>18 my account number.</p> <p>19 Q. And you are shown as having an 83.40</p> <p>20 percent interest in that composition, is that right?</p> <p>21 A. That's correct.</p> <p>22 Q. And that's an 83.40 interest in the public</p> <p>23 performance royalties associated with that</p> <p>24 composition?</p> <p>25 A. With the writer's share.</p>	<p>28</p> <p>1 A. Joe Bacal was at this time creative</p> <p>2 director and owner of Griffin Bacal Incorporated</p> <p>3 Advertising Company.</p> <p>4 Q. When you say at this time, are you</p> <p>5 referring to the time that the composition --</p> <p>6 A. That we created the Transformers.</p> <p>7 Q. That would be what year approximately?</p> <p>8 A. '83 or '84.</p> <p>9 Q. And did you have occasion to have any</p> <p>10 involvement at all in connection with financial</p> <p>11 dealings between -- let me back up and get a couple</p> <p>12 background questions in here.</p> <p>13 You testified earlier you were with Michlin</p> <p>14 and Company up until approximately 1983, was it?</p> <p>15 A. Yes.</p> <p>16 Q. And then did there come a time when you</p> <p>17 became associated with another company?</p> <p>18 A. Yes, I left Michlin Company and formed my</p> <p>19 own business in partnership with Anne Bryant called</p> <p>20 Kinder and Bryant Limited.</p> <p>21 Q. And at some point in time --</p> <p>22 A. Kinder, Bryant and Aquino Limited</p> <p>23 initially.</p> <p>24 MS. PHARES: I have two objections. First</p> <p>25 of all, Ann Bryant should not be making signals</p>

<p style="text-align: right;">29</p> <p>1 to the witness as she just did and second of 2 all, I'm going to have a standing objection to 3 any questions reflecting or relating to the 4 relationship with GBI. GBI is not a defendant 5 in this case and we're wasting our time with 6 questions relating to GBI. 7 A. I could substitute everything that said GBI 8 and say Sunbow Productions because from my point of 9 view, from our point of view as writers, they were 10 the same entity, although in paper they were 11 different. 12 Q. You just heard an objection from counsel 13 about some kind of signals that apparently counsel 14 thinks were sent to you by Miss Bryant. 15 Did these signals have any bearing 16 whatsoever on your testimony? 17 A. No. 18 Q. Did you interpret these signals to suggest 19 any answers? 20 A. No. 21 MR. MONAGHAN: Anne? Okay. 22 Q. Would your testimony in any way change? 23 A. No. 24 Q. You're here to tell the truth, are you not? 25 A. Yes, completely.</p>	<p style="text-align: right;">31</p> <p>1 percent interest, Messrs. Bacal -- Mr. Bacal and 2 Ms. Bryant are shown as having each an 8.3 percent 3 interest and then there's a split between the two 4 publishers shown there, is that correct? 5 A. Right. 6 Q. Do you know how that came to be? 7 A. I don't understand that. 8 Q. And I'm going to ask you the same questions 9 with respect to the next composition Transformers 10 Vocal Theme Two, same question, do you know how those 11 registrations were accomplished -- 12 A. No, I don't know. 13 Q. You had nothing to do with any changes of 14 these registrations? 15 A. No. These are not the percentages that I 16 agreed to. 17 Q. I see a name but just because it may come 18 up in the course of the litigation, it would be good 19 to have it identified on the record, Barry Harman on 20 the composition on the bottom of Exhibit-4? 21 A. Right. 22 Q. Who is Barry Harman? 23 A. Barry Harman is a lyricist that on a couple 24 of projects we worked with, he wrote lyrics and we 25 wrote music.</p>
<p style="text-align: right;">30</p> <p>1 Q. You took an oath? 2 A. Right. 3 Q. As far as you know, has this registration 4 been changed even up until today in terms of the 5 performance royalties relative to the Transformers 6 theme, changed on the records of BMI as yet? 7 A. No, it has not been changed as yet. 8 Q. Now, I'm going to ask you the same question 9 -- 10 A. You mean changed back to what it should be? 11 Q. Right. 12 MS. SAFFER: Objection. Witness is making a 13 legal conclusion in a statement such as this. 14 A. To what I perceive it should be. 15 Q. Now with respect to the second title that's 16 shown on page 72, Exhibit-4, Transformers Theme Open, 17 do you have any idea as to how the credits that are 18 shown there came to be on the records of BMI? 19 A. I have no idea. 20 Q. Do you know who it was that was responsible 21 for advising BMI, if anyone, as to the allocation of 22 contributions and credits? 23 A. Well, it came from Sunbow Productions and 24 from Starwild Music. 25 Q. Again, you're shown as having an 83.4</p>	<p style="text-align: right;">32</p> <p>1 Q. Do you have in mind, any particular -- 2 A. In particular, GI Joe, the movie theme, he 3 wrote the lyrics on that and the Jem Show, he wrote 4 the lyrics on the songs. Actually, we took his 5 phrases and made them into lyrics. 6 Q. Anne Bryant, when did you first meet Anne 7 Bryant? 8 A. 1978. 9 Q. What were the circumstances? 10 A. I went to work at Michlin -- it was called 11 Michlin and Hill at that time, a music production 12 company in New York City. 13 I was given a five-year contract there and 14 I met Anne Bryant as the music director of that 15 company. 16 Q. And did you come to collaborate with her 17 with respect to jingles, compositions? 18 A. Yes, I did. 19 Q. Can you give us some of the names of some 20 of the jingles that you collaborated on? 21 A. Well, if we use collaboration kind of as a 22 loose term because we used to write separately but 23 then we would get together and play for each other 24 what we had come up with, mostly -- rarely changes 25 were made at all but in that sense, we collaborated</p>

<p>33</p> <p>1 because if one of us won, we all won because we were 2 working for a music production house. We all 3 benefited regardless of which writer's song was 4 chosen.</p> <p>5 Q. What's your present relationship with 6 Miss Bryant?</p> <p>7 A. Friends.</p> <p>8 Q. You've been involved with litigation with 9 Anne Bryant, have you not?</p> <p>10 A. Yes, I have.</p> <p>11 Q. In fact, you were originally a defendant in 12 this case?</p> <p>13 A. Yes, I was.</p> <p>14 Q. And also involved in a prior litigation 15 that terminated in 1994, I believe?</p> <p>16 A. I think so.</p> <p>17 Q. And without holding you to details, do you 18 recall generally how -- strike that.</p> <p>19 I had you reached some sort of a resolution 20 of whatever differences you had that caused these 21 litigations to ensue?</p> <p>22 A. Yes.</p> <p>23 Q. Without holding you to the details, can you 24 tell us please for the record what the resolution of 25 the differences was?</p>	<p>35</p> <p>1 Q. And spin-off from what entity?</p> <p>2 A. From Griffin Bacal. I would imagine 3 legally, they are separate entities but they were 4 very intertwined --</p> <p>5 MS. PHARES: Objection, foundation.</p> <p>6 MR. MONAGHAN: You can't interrupt his 7 answer. You can objection after he's done but 8 you can't object in the middle of an answer. 9 That's the way the system works. So please the 10 hold the objection until he's done.</p> <p>11 Q. Can you finish your answer?</p> <p>12 A. The reason I'm making that point is 13 sometimes we weren't even that conscious if we were 14 being hired by Sunbow or by GBI because the people 15 hiring us were the same. Joe Bacal and the writers 16 from Sunbow were the same as the people from GBI. 17 There was no differentiation. At the time of 18 contracts, that would be made clear.</p> <p>19 Q. Who were the principals of Sunbow?</p> <p>20 A. The principals I knew, Tom Griffin and Joe 21 Bacal.</p> <p>22 Q. And who were the principals, if you know, 23 of GBI?</p> <p>24 A. Tom Griffin and Joe Bacal.</p> <p>25 Q. And where were the offices of the</p>
<p>34</p> <p>1 A. Yeah. Generally, it was just a 2 misunderstanding of interpretation of our termination 3 agreement when I bought Michlin -- I mean Kinder and 4 Bryant from Anne, I bought her share so through the 5 course of litigation, we worked out a settlement of 6 that, basically leaving whatever was in her name in 7 her name, what is in my name in my name and we went 8 on.</p> <p>9 Q. When you say in her name, you mean where?</p> <p>10 A. Writer's shares at BMI.</p> <p>11 Q. And GI Joe was in her name at BMI?</p> <p>12 A. Some of the GI Joe was in her name.</p> <p>13 Q. Now, what is the relationship of Sunbow to 14 GBI as you understood it? Let me back up a little 15 bit.</p> <p>16 Griffin Bacal, Inc., what is or was that 17 entity?</p> <p>18 A. Griffin Bacal, Incorporated was an 19 advertising agency that represented Hasbro Toys which 20 was really their only large account at the time. They 21 later got some business from Sharp Electronics whom 22 we also worked for.</p> <p>23 Sunbow Productions was the spin-off arm for 24 production of cartoon shows associated with the 25 products that GBI represented.</p>	<p>36</p> <p>1 companies?</p> <p>2 A. They were on 19th Street and 5th Avenue.</p> <p>3 Q. Both companies?</p> <p>4 A. Same office.</p> <p>5 Q. When you went to the offices, what was on 6 the door, what names were on the door?</p> <p>7 A. Griffin Bacal, Incorporated. I don't 8 remember it saying Sunbow Productions.</p> <p>9 Q. And getting back to your transition from 10 Michlin and Company to Kinder, Bryant, Aquino 11 originally, did there come a time that name changed?</p> <p>12 A. Yeah. Within the first year, Sarah Aquino 13 was the salesperson that came with us and didn't 14 quite gel so we bought her out relatively quickly and 15 made it Kinder and Bryant.</p> <p>16 Q. As far as any continued relationship if any 17 with Griffin Bacal or Joe Bacal, what happened in 18 that regard?</p> <p>19 A. The relationship just continued to grow.</p> <p>20 Q. What kind of work were you doing for 21 Mr. Bacal? When I say what kind of work, what 22 accounts, what jingles?</p> <p>23 MS. PHARES: Before you begin, the question 24 misrepresents the prior testimony. As far as we 25 know, he was not working for Mr. Bacal.</p>

<p style="text-align: right;">37</p> <p>1 Q. You can answer the question.</p> <p>2 MR. MONAGHAN: We don't know that. A judge</p> <p>3 can rule on that.</p> <p>4 MS. PHARES: I'm just objecting to the form</p> <p>5 of your question. He can answer.</p> <p>6 MR. MONAGHAN: I didn't hear you say form of</p> <p>7 the question.</p> <p>8 A. Could you say the question again?</p> <p>9 Q. Actually, let me ask the question since</p> <p>10 counsel raises it. Who did you consider yourself as</p> <p>11 doing the work for?</p> <p>12 A. Well, directly, Joe Bacal and he</p> <p>13 represented Griffin Bacal and Sunbow Productions.</p> <p>14 Q. I guess that answers that issue. You were</p> <p>15 working on which accounts of their clients?</p> <p>16 A. Hasbro Toys, virtually every major product</p> <p>17 that they had, we worked on. We were doing probably</p> <p>18 85 percent of music for Hasbro Toys for many years.</p> <p>19 Q. Can you describe, please, what if anything</p> <p>20 happened to Hasbro in terms of how the business grew</p> <p>21 or did not grow in this time period that you are</p> <p>22 doing work, jingles?</p> <p>23 A. When we first met Joe Bacal and he called</p> <p>24 us, he worked at Benton & Bowles, to come over and</p> <p>25 take a look at some of their toy projects that they</p>	<p style="text-align: right;">39</p> <p>1 production and a small fee, \$750 or something for a</p> <p>2 demo. Later, contracts were done if something went</p> <p>3 final.</p> <p>4 Q. Now, were you also a performer?</p> <p>5 A. Yes.</p> <p>6 Q. And how about Miss Bryant?</p> <p>7 A. Yes.</p> <p>8 Q. And was that limited to singing or were you</p> <p>9 also a musician?</p> <p>10 A. Musician and singing.</p> <p>11 Q. What instruments did you play?</p> <p>12 A. I played keyboards and I played percussion.</p> <p>13 Q. And how about --</p> <p>14 A. It doesn't mean I played that on</p> <p>15 everything. Sometimes I hired people better than me.</p> <p>16 And Anne also performed. In the musician's union,</p> <p>17 performance also includes leader and contractor.</p> <p>18 Leader is the person who is leading the orchestra,</p> <p>19 they are considered a performer, and generally Anne</p> <p>20 or I were leader on eventually everything.</p> <p>21 Q. Now you mentioned unions. What unions are</p> <p>22 you referring to?</p> <p>23 MS. PHARES: Objection, relevance.</p> <p>24 A. American Federation of Musicians, Screen</p> <p>25 Actor's Guild for the singing and also other things</p>
<p style="text-align: right;">38</p> <p>1 had, it was a very small toy company at that time.</p> <p>2 Apparently, they had been bigger in the</p> <p>3 past but had lost a lot of business. For us, it</p> <p>4 was -- we considered it a very small account because</p> <p>5 it was a small account.</p> <p>6 Q. This is what time period?</p> <p>7 A. In the -- '78, '79. Joe Bacal would have a</p> <p>8 meeting with us, he'd show us Poloroid pictures of a</p> <p>9 mockup of the toy that they were projecting to build,</p> <p>10 the prototype and essentially saying do something.</p> <p>11 Sometimes there was a line but usually not even a</p> <p>12 line, just here's what the toy is going to do, here's</p> <p>13 what it looks like, go do an ad campaign and we would</p> <p>14 write lyrics, a campaign, music. We'd get back</p> <p>15 together with Joe --</p> <p>16 Q. Let me stop you right there. Was there</p> <p>17 anything in writing recording an understanding, a</p> <p>18 financial understanding at that point?</p> <p>19 A. I don't think there's anything in writing.</p> <p>20 Initially, it would be verbal. After a verbal --</p> <p>21 because the work usually had to be rapid. We had to</p> <p>22 get -- they had a job to do, they wanted to present</p> <p>23 it to the client, we had to get it going. There would</p> <p>24 probably be a verbal understanding that if we would</p> <p>25 go further, they would cover the cost of the demo</p>	<p style="text-align: right;">40</p> <p>1 for singing, American Federation of Television and</p> <p>2 Radio Artists.</p> <p>3 Q. If you know, what's the relationship or</p> <p>4 what was the relationship at that point in time</p> <p>5 between Griffin Bacal, Inc. and the unions regarding</p> <p>6 any of these compositions that you were involved</p> <p>7 with?</p> <p>8 A. Griffin Bacal had to be a signatory to each</p> <p>9 of those unions meaning they had signed documents</p> <p>10 with the union, a contract with the union agreeing to</p> <p>11 pay at least scale wages for every performer as</p> <p>12 determined through the unions including residuals for</p> <p>13 performance rights.</p> <p>14 Q. What about Sunbow?</p> <p>15 A. Same thing.</p> <p>16 MS. PHARES: Objection, form of the</p> <p>17 question.</p> <p>18 Q. You understood my question to mean exactly</p> <p>19 the same as the prior question regarding GBI?</p> <p>20 A. It was my understanding Sunbow was a</p> <p>21 signatory to American Federation of Television and</p> <p>22 Radio Artists, Screen Actors Guild and American</p> <p>23 Federation of Musicians.</p> <p>24 Q. And what if anything are your</p> <p>25 responsibilities as a song leader -- is song leader</p>

<p>41</p> <p>1 the right term?</p> <p>2 MS. PHARES: Objection, relevance.</p> <p>3 A. Music leader. The leader's responsibility</p> <p>4 is to see that the contracts are created, meaning a</p> <p>5 contract with the union which was actually a</p> <p>6 contract, as I recall, between the agency and the</p> <p>7 union or Sunbow and the union. We were kind of the</p> <p>8 administrator of that.</p> <p>9 We would create the contract, send it to</p> <p>10 Sunbow or to Griffin Bacal who would then pay the</p> <p>11 contract to the union. We didn't pay the contract,</p> <p>12 nor did we bill Griffin Bacal or Sunbow for the</p> <p>13 contracts.</p> <p>14 Q. Who would have that function?</p> <p>15 A. Which function?</p> <p>16 Q. Who, if anyone, had the function of billing</p> <p>17 Sunbow or GBI as the case may be?</p> <p>18 A. Well, I don't think anybody billed them.</p> <p>19 With the contract, they sent the payments. As they</p> <p>20 registered the work with the union, they would send</p> <p>21 the checks with the contract.</p> <p>22 Q. Do you have any knowledge, Dr. Kinder, as</p> <p>23 to whether or not Sunbow or GBI have made payments</p> <p>24 for the singers and musicians with respect to the</p> <p>25 compositions at issue in this case, Transformers?</p>	<p>43</p> <p>1 did, a new contract had to be generated representing</p> <p>2 the work as a television theme song.</p> <p>3 MS. SAFFER: Since it appears that you are</p> <p>4 moving on perhaps to a slightly different area,</p> <p>5 Pat, could we take this opportunity to take a</p> <p>6 few minute break? I will call the office and ask</p> <p>7 them to see if they can find the contracts. The</p> <p>8 sooner I do it, the more chance we have.</p> <p>9 MR. MONAGHAN: Sure.</p> <p>10 (SHORT BREAK)</p> <p>11 Q. Back on the record, Dr. Kinder. You</p> <p>12 testified earlier that you had met Mr. Bacal when he</p> <p>13 was the creative director at Benton & Bowles. Do you</p> <p>14 recall that testimony?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Now, did you have any involvement at that</p> <p>17 time with respect to any financial arrangements</p> <p>18 between Michlin and Company and the clients of</p> <p>19 Michlin and Company?</p> <p>20 A. Initially at that time, no.</p> <p>21 Q. Did there come a point in time?</p> <p>22 A. Yes.</p> <p>23 Q. This is while you were at Michlin and</p> <p>24 Company?</p> <p>25 A. Right.</p>
<p>42</p> <p>1 A. For the original television, absolutely.</p> <p>2 They paid the demo fees, the session fees.</p> <p>3 Q. I'm talking about to the unions?</p> <p>4 A. To the unions.</p> <p>5 Q. Okay.</p> <p>6 A. And the residuals because I receive those.</p> <p>7 Any subsequent uses --</p> <p>8 MS. PHARES: Objection.</p> <p>9 MR. MONAGHAN: Can you let him finish his</p> <p>10 answer? I don't care that you don't like it.</p> <p>11 MS. PHARES: It has nothing to do with</p> <p>12 liking, it's irrelevant. The unions are not in</p> <p>13 this case. There are no union issues in this</p> <p>14 case.</p> <p>15 Q. Can you finish your answer? Then we can</p> <p>16 move on.</p> <p>17 A. It's a regulation of the union and of the</p> <p>18 contract that for every media, if this work goes into</p> <p>19 a different media, a new contract has to be generated</p> <p>20 as if it was recreated even if it's the same work.</p> <p>21 For instance, at Sunbow and Griffin Bacal,</p> <p>22 Transformers, if we did a Transformers commercial, we</p> <p>23 had a contract, it was registered as a television</p> <p>24 commercial. If they used the same music and put it on</p> <p>25 a television show which I think in some cases they</p>	<p>44</p> <p>1 Q. What was the extent of your involvement</p> <p>2 when you did get involved in terms of financial</p> <p>3 interest?</p> <p>4 A. Later on, you know, Spencer traveled a lot</p> <p>5 and I would negotiate contracts, pricing, do the</p> <p>6 budgets for the productions, get them approved with</p> <p>7 the client, the whole gamut.</p> <p>8 Q. Did Michlin and Company employ written</p> <p>9 agreements?</p> <p>10 A. Yes.</p> <p>11 Q. And this involvement of yours, did that</p> <p>12 also include dealing with the written contracts?</p> <p>13 A. Yes, it did.</p> <p>14 Q. I don't have any written contracts of</p> <p>15 Michlin and Company here to ask you about, but I'm</p> <p>16 going to ask you for your understanding of what the</p> <p>17 composer's continued interests were, if any, in any</p> <p>18 of the compositions?</p> <p>19 MS. PHARES: Objection, relevance.</p> <p>20 A. In our standard contract, the writers, we</p> <p>21 retained all the publishing writer's share and</p> <p>22 publisher's share in any work that we created.</p> <p>23 Q. That's Michlin and Company?</p> <p>24 A. Huh?</p> <p>25 Q. You created all the publishing?</p>

<p style="text-align: right;">45</p> <p>1 A. Right.</p> <p>2 Q. And all of the writer's royalties?</p> <p>3 A. Right.</p> <p>4 Q. Now using as a frame of reference the</p> <p>5 catalog that we looked at earlier, page 72,</p> <p>6 Exhibit-4, when you say retained all the writer's</p> <p>7 royalties and publishing, are you limiting your</p> <p>8 answer to just the public performance royalties or</p> <p>9 other types of royalties?</p> <p>10 A. It would include all royalties.</p> <p>11 Q. What other kinds of royalties are there in</p> <p>12 your understanding, now I'm asking only about at</p> <p>13 Michlin and Company?</p> <p>14 A. Well, at that time, there wasn't that much</p> <p>15 connection with the performance agencies to get our</p> <p>16 writer's royalties for commercials. If we did other</p> <p>17 things, movie scoring or something, then it would be.</p> <p>18 The biggest reason we retained the rights</p> <p>19 was so that if these commercials became something</p> <p>20 bigger, sometimes a commercial could become a song, a</p> <p>21 hit song or used in a movie, then it would have</p> <p>22 value. Later on, we started registering the</p> <p>23 commercials for payment as music on air and it became</p> <p>24 more valuable.</p> <p>25 Q. Registering with --</p>	<p style="text-align: right;">47</p> <p>1 Joe Bacal?</p> <p>2 A. Yes.</p> <p>3 Q. Anyone else present?</p> <p>4 A. Anne Bryant was there as well.</p> <p>5 Q. Do you know where it occurred?</p> <p>6 A. At Griffin Bacal's, Joe Bacal's office.</p> <p>7 Q. And was there anyone else present besides</p> <p>8 the three of you?</p> <p>9 A. Not that I remember.</p> <p>10 Q. And what did you understand that to mean in</p> <p>11 the context of any continued relationship with Joe</p> <p>12 Bacal?</p> <p>13 A. It meant that we would continue to do union</p> <p>14 work, we would receive fees for production and Anne</p> <p>15 Bryant and I would sing on every commercial and</p> <p>16 perform as musicians. The deal with Griffin Bacal and</p> <p>17 Sunbow at that time was we had negotiated that they</p> <p>18 would keep the publisher's share of the works, we</p> <p>19 would keep the writer's share. That had become a</p> <p>20 negotiation in the Michlin contract.</p> <p>21 Q. And when you say they would keep the</p> <p>22 publisher's share, you're talking about the BMI</p> <p>23 performance royalties?</p> <p>24 A. Yes, and the responsibilities. A publisher</p> <p>25 does more than just collect royalties. They have a</p>
<p style="text-align: right;">46</p> <p>1 A. That happened after I had my own company,</p> <p>2 Kinder and Bryant, but we were very protective of the</p> <p>3 rights mostly for future possible uses of those</p> <p>4 creations.</p> <p>5 Q. At the point in time that you formed your</p> <p>6 own company and I believe you've already testified</p> <p>7 you continued to do business with Joe Bacal, now he's</p> <p>8 left Benton & Bowles and has his own agency, Griffin</p> <p>9 Bacal, Inc.?</p> <p>10 A. Correct.</p> <p>11 Q. And he has his own TV production company,</p> <p>12 Sunbow?</p> <p>13 A. Right.</p> <p>14 Q. What discussions did you have with</p> <p>15 Mr. Bacal about the financial arrangements vis-a-vis</p> <p>16 the writer's continued interests?</p> <p>17 MS. PHARES: Objection, relevance. GBI is</p> <p>18 not in this case.</p> <p>19 A. We had one discussion and it was</p> <p>20 essentially one sentence, same deal as Michlin. We</p> <p>21 both nodded as if we both understood what that was</p> <p>22 because we had dealt with finances at Michlin and</p> <p>23 Company together when he was the client and I was</p> <p>24 representing Michlin and Company and we proceeded.</p> <p>25 Q. Is this a discussion you had directly with</p>	<p style="text-align: right;">48</p> <p>1 responsibility to the writers to represent them and</p> <p>2 that's my understanding of what the agreement was</p> <p>3 that they represent that they'll promote the product,</p> <p>4 get it placed and help us make money from it.</p> <p>5 Q. I don't think I asked you, approximately</p> <p>6 when did this discussion ensue? We had a general</p> <p>7 timeframe about the time of the transition. Can you</p> <p>8 pinpoint the year?</p> <p>9 A. It would be late '93 -- I mean late '83 or</p> <p>10 early '84.</p> <p>11 Q. How about in terms of where you were in</p> <p>12 delivering music, any particular compositions that</p> <p>13 come to mind in that timeframe?</p> <p>14 A. I believe the first job we did as Kinder</p> <p>15 Ann Bryant was Transformers.</p> <p>16 Q. And this is a job for Joe Bacal?</p> <p>17 A. Joe Bacal.</p> <p>18 Q. And did there come a time when there was a</p> <p>19 production for or music produced for Sunbow as a</p> <p>20 separate entity that you know of -- withdrawn.</p> <p>21 Does the name The Great Space Coaster mean</p> <p>22 anything to you?</p> <p>23 A. Yes.</p> <p>24 Q. And what was that?</p> <p>25 A. That was the theme song for a television</p>

<p>49</p> <p>1 show that Sunbow produced for kids.</p> <p>2 MS. SAFFER: Could you repeat the name?</p> <p>3 MR. MONAGHAN: The Great Space Coaster.</p> <p>4 A. We did that job at Michlin and Company and</p> <p>5 Anne Bryant wrote that song.</p> <p>6 Q. Who at Kinder Bryant if anyone had</p> <p>7 responsibility for the financial dealings and</p> <p>8 negotiations with Mr. Bacal?</p> <p>9 A. Officially, Anne and I were equal partners</p> <p>10 and either of us could negotiate any deal. In general</p> <p>11 practice, I handled more of the business than Anne</p> <p>12 did. We didn't give each other titles other than</p> <p>13 chairman and president.</p> <p>14 Q. Dr. Kinder, you had put in an affidavit in</p> <p>15 this case pertaining to certain agreements that were</p> <p>16 produced in 2004.</p> <p>17 Do you recall executing an affidavit or</p> <p>18 declaration I think it was?</p> <p>19 A. Yes, I do. Are you referring to the</p> <p>20 signature affidavit?</p> <p>21 Q. Yeah.</p> <p>22 A. Yes.</p> <p>23 Q. I'm going to show you now some exhibits.</p> <p>24 I'm also going to attempt to actually get these up on</p> <p>25 the wall. I'm referring now counsel, to Exhibit-M, at</p>	<p>51</p> <p>1 it was trial Exhibit-M, the Jen feature song</p> <p>2 agreement between Sunbow Productions, Inc. and Kinder</p> <p>3 and Bryant dated June 1, 1985.</p> <p>4 Are you familiar with this document,</p> <p>5 Dr. Kinder?</p> <p>6 A. Yes, I am.</p> <p>7 Q. That's my marking on the exhibit. I'm</p> <p>8 going to take you to the signature page. If you'd</p> <p>9 like to look at the hard copy, I have it here as</p> <p>10 well. I'm going to ask you to go through the</p> <p>11 agreement, Exhibit-M.</p> <p>12 You don't have to read every line as long</p> <p>13 as you have -- I'd like you to satisfy yourself in</p> <p>14 terms of --</p> <p>15 MS. PHARES: I object to the fact that the</p> <p>16 witness has been handed a paper copy that is</p> <p>17 highlighted.</p> <p>18 MR. MONAGHAN: If you have another one,</p> <p>19 that's fine.</p> <p>20 MS. PHARES: You know what, it's your</p> <p>21 deposition but you're not supposed to be using</p> <p>22 the exhibits that are highlighted.</p> <p>23 A. I can read the one from up here if you</p> <p>24 would rather.</p> <p>25 Q. Give me that back since counsel is</p>
<p>50</p> <p>1 the trial, the Jen agreement, June 1, 1985.</p> <p>2 MS. SAFFER: Is this Exhibit-5 for this</p> <p>3 deposition?</p> <p>4 MR. MONAGHAN: No, at the trial.</p> <p>5 MS. SAFFER: Is this going to be Exhibit-5</p> <p>6 right now?</p> <p>7 MR. MONAGHAN: Aren't we just cluttering up</p> <p>8 the record that way? This is the trial exhibit.</p> <p>9 There won't be any dispute.</p> <p>10 MS. SAFFER: Exhibit what?</p> <p>11 MR. MONAGHAN: Five --</p> <p>12 MS. SAFFER: From the trial, what was it.</p> <p>13 MR. MONAGHAN: It was Exhibit-M at the</p> <p>14 trial.</p> <p>15 MS. SAFFER: M.</p> <p>16 MR. MONAGHAN: At the framed issue hearing.</p> <p>17 MS. PHARES: It's Defendant's Exhibit-M.</p> <p>18 MR. MONAGHAN: That's correct.</p> <p>19 MS. PHARES: You know what, I can't see in</p> <p>20 the dark. Can we -- is there any way --</p> <p>21 MR. MONAGHAN: I have a hard copy of this</p> <p>22 exhibit too.</p> <p>23 Q. This is a document from the defendant</p> <p>24 Sunbow's appendix on appeal -- no, actually, it's</p> <p>25 respondent's appendix. It's from our appendix. And</p>	<p>52</p> <p>1 objecting. This page, Dr. Kinder, page nine of this</p> <p>2 agreement, does that bear your initials?</p> <p>3 A. It looks like my initials.</p> <p>4 Q. And do you recognize the signature of Carol</p> <p>5 Weitzman on the next page?</p> <p>6 A. Yes, Carol Weitzman.</p> <p>7 Q. How about yours?</p> <p>8 A. That appears to be my signature.</p> <p>9 Q. That's page ten?</p> <p>10 A. Yes.</p> <p>11 Q. Referring to Schedule A to that agreement</p> <p>12 which I'm showing you now, do you recognize the</p> <p>13 initials?</p> <p>14 A. Yes.</p> <p>15 Q. Is that Anne Bryant's initials?</p> <p>16 A. It looks like her initials and my</p> <p>17 signature.</p> <p>18 Q. Page 13, the inducement letter, are you</p> <p>19 familiar with those signatures?</p> <p>20 A. Yes.</p> <p>21 Q. Is that yours?</p> <p>22 A. That appears to be mine.</p> <p>23 Q. And Ms. Bryant's?</p> <p>24 A. Yes.</p> <p>25 Q. Now, I'm going to go back up to the top of</p>

<p style="text-align: right;">53</p> <p>1 this. What compositions does this agreement deal with 2 if you know? 3 A. I believe it deals with the Jem songs that 4 we wrote, there were over 150 songs we wrote for the 5 Jem Show and this contract covered production 6 agreement on those songs. 7 Q. And was there anything that you see in the 8 agreement that suggests that this agreement covers 9 the songs, the feature songs? 10 MS. PHARES: Objection to the form of the 11 question. 12 Q. In other words, how can you tell? 13 MS. PHARES: Leading. 14 MR. MONAGHAN: I rephrased the question. 15 Q. How can you tell? 16 A. Well, it specifically refers to writing, 17 preparing and delivering original music for songs to 18 be used in the fully animated children's television, 19 show. 20 Q. Are you familiar with paragraph six of this 21 agreement, I'll bring it up, which begins on the 22 bottom of page four? 23 A. Yes. 24 Q. You see there's a term "music publishing 25 rights" in quotes on that page?</p>	<p style="text-align: right;">55</p> <p>1 we all realized there was a strong possibility that 2 they could become an entity of their own in some form 3 in the future rather than just the television show. 4 So, we negotiated that we would be paid for 5 other forms, other media they would be used in, sheet 6 music, mechanicals, it was supposed to encompass if 7 they became phonograph records. I don't think we had 8 DVDs yet but -- if they became a salable product, 9 there was a possibility, in fact, we had a hope that 10 one or many of the songs would become hits. There was 11 certainly that possibility. 12 This was a cartoon rock band and we were 13 writing and producing their songs. So they were -- 14 it was like creating a record, a music record. 15 Q. And having said what you just said, what 16 did this mean to you in terms of what your continued 17 interest would be? 18 MS. PHARES: Objection. 19 A. We anticipated that there would be other 20 uses of this product in the future and some of those 21 were outlined that we would receive payment for 22 future uses of this product for whatever it was used 23 for in the future. 24 Q. Now -- 25 A. Actually, we anticipated that we didn't</p>
<p style="text-align: right;">54</p> <p>1 A. Right. 2 MS. PHARES: Objection, these agreements are 3 not in this case. The court has already ruled 4 that we are not trying this case on these 5 agreements. This is not relevant. We are 6 wasting our time. 7 MR. MONAGHAN: Couldn't disagree with you 8 more, counsel. 9 In fact, I think the last decision said 10 they are valid written agreements. I don't know 11 which ones you think the good judge is talking 12 about. 13 Q. Now, referring to paragraph 6(a), you see 14 that there are a series of rights granted to the 15 contractor in this case, correct? 16 A. Yes. 17 Q. And what I'm asking you now is how does 18 this paragraph comport with your understanding of 19 whatever continued interests Kinder Bryant and 20 Ms. Bryant had in these compositions? 21 MS. PHARES: Objection, calls for a legal 22 conclusion. 23 Q. How does this square with your 24 understanding? 25 A. Since we were creating songs, there was --</p>	<p style="text-align: right;">56</p> <p>1 know what it would be exactly, but we hoped that this 2 was going to be bigger than just the television show. 3 Q. Can you give me any examples of where 4 payments were received after a contract period and 5 after the composition was delivered to GBI or Sunbow 6 as the case may be for uses in other media? 7 MS. PHARES: Objection, form of the 8 question. 9 A. Well, not outlined in this contract but we 10 did create music cassettes that were sold as a 11 product with the dolls. We received payment for that 12 separate. 13 In this particular thing, other than the 14 television show, I don't think we received payments 15 as per the contract. 16 Q. To your knowledge, has Kinder Bryant or you 17 or Miss Bryant individually ever received any 18 payments for the uses of any of the music composed at 19 Kinder Bryant for Transformers DVDs, GI Joe DVDs, 20 Inhumanoids DVDs, Jem Show, any of those 21 compositions? 22 A. No payments. 23 Q. Have you ever spoken to Miss Phares before? 24 A. Yes. 25 Q. And when was that?</p>

<p style="text-align: right;">57</p> <p>1 A. Two or three years ago, two years ago.</p> <p>2 Q. Was that face-to-face or telephone?</p> <p>3 A. On the telephone, she called me at my</p> <p>4 office.</p> <p>5 Q. And what did she say to you and what did</p> <p>6 you say to her?</p> <p>7 A. I think initially she was asking me if I</p> <p>8 had some documents, in particular, it might have been</p> <p>9 this agreement.</p> <p>10 Q. Referring to the Jem agreement?</p> <p>11 A. The Jem agreement which I did not have. She</p> <p>12 proceeded to have more discussions with me and about</p> <p>13 what my participation in this might be since at the</p> <p>14 time I was also a defendant and she made some</p> <p>15 comments that it was likely that we probably were due</p> <p>16 some other, at least publishing money writer's</p> <p>17 royalties based on other uses of the music.</p> <p>18 We particularly spoke about the Jem Show</p> <p>19 DVD which I had just come to understand it recently</p> <p>20 had been released. I had reviewed it myself and</p> <p>21 noticed that not only did they show the episodes but</p> <p>22 on the special features, it has a songs only section.</p> <p>23 In other words, it's being sold like a music video</p> <p>24 with just our music being played with the videos. You</p> <p>25 don't have to watch the shows at all and I took</p>	<p style="text-align: right;">59</p> <p>1 Q. And it has a play songs feature?</p> <p>2 A. Absolutely.</p> <p>3 Q. So let me see if I can get that up and</p> <p>4 running.</p> <p>5 Was this the DVD you were referring to in</p> <p>6 the conversation with Miss Phares?</p> <p>7 A. Yes, it was.</p> <p>8 Q. Should I click that?</p> <p>9 A. Extra features, play songs.</p> <p>10 Q. For the record, can you tell us please</p> <p>11 where the cursor is now on this Jem DVD?</p> <p>12 A. Under special features, it has a section</p> <p>13 called play songs.</p> <p>14 Q. By the way, does this DVD contain the songs</p> <p>15 that are the subject of that agreement?</p> <p>16 A. Absolutely.</p> <p>17 Q. That agreement being Exhibit-M?</p> <p>18 A. Exactly.</p> <p>19 Q. I clicked play songs.</p> <p>20 A. It will just play the songs like it's a</p> <p>21 record album.</p> <p>22 Q. I can turn off the video now and just</p> <p>23 continue to listen to this music, is that correct?</p> <p>24 A. Yeah.</p> <p>25 Q. Is there a story line associated with the</p>
<p style="text-align: right;">58</p> <p>1 exception that they were using the music without</p> <p>2 permission and where were the royalties we were</p> <p>3 supposed to get.</p> <p>4 Q. You took exception in your conversation</p> <p>5 with Miss Phares?</p> <p>6 A. Yes. It wasn't a confrontational</p> <p>7 conversation. She's a very nice lady, and she</p> <p>8 responded by saying you may very well be due more</p> <p>9 money and if you are so entitled, you should be paid.</p> <p>10 Q. Did she say who might owe that money?</p> <p>11 A. She did not.</p> <p>12 Q. Now you mentioned Jem. We don't have a Jem</p> <p>13 DVD here, so am I correct they the play songs feature</p> <p>14 would be on a DVD -- oh, this is the DVD?</p> <p>15 A. This is the DVD.</p> <p>16 Q. Did you bring this with you today? Can we</p> <p>17 mark this please?</p> <p>18 (EXHIBIT-5 MARKED FOR IDENTIFICATION)</p> <p>19 Q. Showing you now Kinder Exhibit-5 for</p> <p>20 identification, Dr. Kinder. Can you identify that?</p> <p>21 A. This is the complete first and second</p> <p>22 seasons Jem and the Holograms DVD series.</p> <p>23 Q. Have you actually had occasion to put that</p> <p>24 in a machine and play it?</p> <p>25 A. Yes, I have.</p>	<p style="text-align: right;">60</p> <p>1 play songs feature or is it just the music?</p> <p>2 A. It's not part of the show. In this context,</p> <p>3 it's just like it's a music video and they just play</p> <p>4 song after song after song, no story line. Next song.</p> <p>5 Q. Was that the Jem Show theme that we just</p> <p>6 heard?</p> <p>7 A. No. This is a new song now. If you do show</p> <p>8 the video with the songs, in between each one the</p> <p>9 credit comes up just like on MTV, it comes up, it</p> <p>10 says what the song is, Jem and the Holograms, the</p> <p>11 title before it and then it goes to the next song,</p> <p>12 next song, next song. You play it just like a record</p> <p>13 album.</p> <p>14 Q. You said Miss Phares said you may very well</p> <p>15 be entitled to additional payments with respect to</p> <p>16 what we just heard, correct?</p> <p>17 A. Right.</p> <p>18 Q. And you haven't gotten any, have you?</p> <p>19 A. No.</p> <p>20 Q. Have you any understanding as to whether</p> <p>21 Anne has received any payments?</p> <p>22 A. To my knowledge, she hasn't.</p> <p>23 Q. Now I'm going to play the boy's songs. For</p> <p>24 the record, I'm going to be taking a DVD from</p> <p>25 Plaintiff's Exhibit-10 in evidence at the trial which</p>

<p style="text-align: right;">61</p> <p>1 is entitled Transformers Season Two Part One. It 2 consists of I think three DVDs. Let me see. 3 MS. PHARES: The trial exhibit again is? 4 MR. MONAGHAN: Ten. 5 Q. I'm mistaken, it's four. Do you know what 6 Rhino is Dr. Kinder? 7 A. Before this, I really didn't know who they 8 were. 9 Q. Okay, that's fine. 10 MS. PHARES: While this is going on, I am 11 going to repeat for the record my objection to 12 this whole continuing line of inquiry given that 13 these agreements are not in this case. 14 MR. MONAGHAN: For the record, this is a 15 Sunbow production, so listed on the back on the 16 jacket, 1986 Sunbow Productions, Inc. 17 That's the same Sunbow as the defendant. 18 MS. PHARES: I said the contracts for these 19 are not in this case. Maybe you misunderstood 20 my objection. 21 Q. What are we looking at now, Dr. Kinder? 22 Whose voice is that? 23 A. That's me. 24 Q. That electronically altered voice? 25 A. Yes, that's me, the electronic voice is me.</p>	<p style="text-align: right;">63</p> <p>1 was lifted to become the theme song for the 2 television show. 3 Q. Lifted by whom or what? 4 A. Sunbow. 5 Q. And so when the music was composed, it was 6 composed for GBI? 7 A. Originally. 8 Q. And then it was lifted by Sunbow for the TV 9 production? 10 A. Right. 11 Q. And then as I've mentioned, Sunbow is shown 12 as the producer on the jacket for the DVD? 13 A. As I explained before, when something goes 14 from one medium to another, a new contract has to be 15 done as if it was recreated with the union. 16 Q. Do you know how the music -- how Sunbow 17 obtained any license or rights to use this music? 18 Only if you know, don't guess. 19 A. No. For the original television show, I 20 believe that was done correctly, at least where we 21 were concerned. 22 I think they did another musicians and 23 singers contract, paid to put it on air as a 24 television -- 25 Q. A union contract?</p>
<p style="text-align: right;">62</p> <p>1 Q. Whose music is that? 2 A. Anne Bryant wrote the music. It's also a 3 production, this is the television show and this is 4 the production that we did. I think it's a 5 commercial. 6 MS. PHARES: I don't believe there is a 7 question pending. 8 Q. You had something to add there, Doctor? 9 A. I believe this is a commercial that was 10 lifted and placed in the television show. 11 MS. PHARES: Is there a question pending? If 12 not, should we turn this off and continue? 13 Q. Dr. Kinder, I think you just said, correct 14 me if I'm wrong, that this was originally a 15 commercial, a jingle? 16 MS. PHARES: Objection, there is no -- I 17 don't know where you're getting -- you're 18 clarifying something that hasn't been said. 19 Q. Didn't you say that a moment ago? 20 A. Yes, I did. 21 Q. And what did you mean by that? 22 A. I believe that we created this as a 23 commercial. 24 Q. This being that music? 25 A. This piece of music and this version and it</p>	<p style="text-align: right;">64</p> <p>1 A. A union contract, paid to put it on air as 2 a television theme song and -- but that's the end of 3 it. Any other use, there's not been -- 4 Q. Now we've just seen a Sunbow Jern agreement 5 dated June, 1985, Exhibit-M. 6 Do you know of any comparable Sunbow 7 agreement related to Transformers music? 8 A. In my memory, they generally did create a 9 new contract when it went to Sunbow but I don't 10 remember that particular contract. 11 Q. Would the form of the agreement, if there 12 was one, be the same as the one we've seen relative 13 to Jern? 14 A. It would probably be similar, but maybe not 15 as explicit because of the particular aspect of the 16 Jern songs being a different product. It wasn't just a 17 theme song, it was an actual product. 18 Q. In terms of timing, which would have come 19 first, Transformers or Jern? 20 A. Transformers. 21 Q. The understandings that you've testified to 22 earlier that you have with Mr. Bacal and am I 23 correct, that would also include GBI and Sunbow? 24 A. Yes. 25 Q. The understanding that you testified about</p>

<p style="text-align: right;">65</p> <p>1 about retaining writer's royalties, would that have 2 applied to the music we're listening to now? 3 A. Yes. 4 Q. Do you know of any agreement where those 5 rights were relinquished totally in favor of Sunbow 6 or GBI? 7 A. No. In fact, we never in any circumstance 8 relinquished our writer's royalties to anyone. In 9 fact, these songs were registered with ASCAP and BMI 10 and we were given writer's royalties. 11 Q. How about on the publishing side, 12 mechanical royalties or synchronization rights, those 13 types of interest? 14 A. I don't know that was specified, but we 15 would have expected to be paid for them, the writer's 16 share. 17 MR. MONAGHAN: Counsel, are you willing to 18 stipulate if I were to put the other three disks 19 in and the theme would be played, that the 20 witness's answers would likely be the same or do 21 I have to play each one again? 22 MS. PHARES: You're just saying -- you're 23 asking whether or not -- 24 MR. MONAGHAN: That's Anne Bryant's music. 25 MS. PHARES: You don't need the DVD to ask</p>	<p style="text-align: right;">67</p> <p>1 likely to give the same answers? If I need to go 2 through it, I'll go through it. 3 MS. PHARES: I really don't understand your 4 question. It's the music that would accompany 5 the original productions. If you permit me, I'll 6 ask the witness that and we can then stipulate 7 to that. 8 MR. MONAGHAN: No. You can cover it on 9 cross. 10 Q. Dr. Kinder, would all of this music on 11 these four DVDs and all these various shows have been 12 composed at the same sessions or different sessions? 13 A. All of the music -- can you clarify, on 14 these four? 15 Q. Yeah -- I'm talking about were there 16 multiple jingle recording sessions? 17 A. There were. 18 Q. I'll only take it the first few bars. Do 19 you have any understanding -- you didn't recognize 20 the name Rhino, am I correct? 21 A. No. 22 MS. PHARES: Asked and answered. 23 A. I've heard of them now because after I saw 24 this, I went on line. 25 MS. PHARES: Objection, there is no -- Mr.</p>
<p style="text-align: right;">66</p> <p>1 him that. 2 MR. MONAGHAN: All I'm asking for, are you 3 willing to stipulate to it. 4 MS. PHARES: I don't know what I'm 5 stipulating to, Pat. 6 MR. MONAGHAN: That if I were to put the 7 other disks in and ask the same questions when 8 the theme music comes up again -- 9 Q. Am I correct, Dr. Kinder, the theme music 10 would come up on each of these? 11 A. Yes. 12 MS. PHARES: You mean the Transformers theme 13 music? 14 MR. MONAGHAN: I do, this exhibit. 15 MS. PHARES: I'm sure that the -- it's the 16 music that was created for the original 17 production for Sunbow. I have no objection to 18 that. 19 MR. MONAGHAN: That's not my question. 20 MS. PHARES: Don't these DVDs reproduce 21 those original productions? 22 MR. MONAGHAN: I'm only asking whether you 23 are willing to stipulate that that music I 24 played before would be the same on each of 25 these, the theme music and that the witness is</p>	<p style="text-align: right;">68</p> <p>1 Kinder, when there is no question pending -- 2 A. I was finishing the answer to the question. 3 MS. PHARES: And there was an objection made 4 and Mr. Monaghan did not carry on with his 5 question. 6 Q. Is that that same Transformers theme music? 7 A. Yes, it is. 8 Q. That's Miss Bryant's music? 9 A. Yes. 10 Q. And your voice was -- 11 A. It's my voice. 12 Q. Is it possible even though that doesn't 13 have the set, that Exhibit-10 set of DVDs, even 14 though it doesn't have a specific play songs 15 function, you'll have to help me here, is it possible 16 that you can simply play the songs, you can turn off 17 the video? 18 A. Yeah, because first of all, on the 19 beginning there, it just plays the song over and over 20 and over until you start the show. It plays the 21 theme, it just repeats the theme. 22 Q. I'm now going to insert the DVD from 23 plaintiff's trial Exhibit-8 into evidence 24 "Transformers Villains, the Ultimate Doom." 25 MR. MONAGHAN: My son had this stuff.</p>

<p style="text-align: right;">69</p> <p>1 Q. I believe you'll see J. Edgar Hoover again 2 here.</p> <p>3 Dr. Kinder, is that the same theme we've 4 heard?</p> <p>5 A. It's the same theme, a different 6 production.</p> <p>7 Q. Different production?</p> <p>8 A. That we did.</p> <p>9 Q. Different recording session?</p> <p>10 A. Yes.</p> <p>11 Q. Who were the musicians?</p> <p>12 A. Well, Anne and me and we tended to use -- 13 a group of people, the studio players in New York 14 that we tended to use over and over. Also the singers 15 are -- Anne Bryant and I are both singing on there, I 16 can hear my voice and the solo is me.</p> <p>17 Q. That was a segment from Exhibit-8 in 18 evidence, by the way.</p> <p>19 I just want to make a comment for the 20 record that Plaintiff's Exhibit-8 is also --</p> <p>21 MS. PHARES: Objection, you are just reading 22 from the jacket of this, correct?</p> <p>23 MR. MONAGHAN: Let me finish, please.</p> <p>24 MS. PHARES: Is this your testimony?</p> <p>25 MR. MONAGHAN: Plaintiff's Exhibit-8 bears</p>	<p style="text-align: right;">71</p> <p>1 marked as --</p> <p>2 MR. MONAGHAN: This for the record, by the 3 way, counsel, is the document produced under the 4 tab GBI Transformers agreement 1984 in the 5 binder that you furnished to us and it was also 6 marked as Plaintiff's 47 for identification at 7 the framed issue hearing. Let's just use this 8 one.</p> <p>9 Q. I'm going to show you now, Dr. Kinder -- 10 first I'm going ask Dina to mark this.</p> <p>11 (EXHIBIT-6 MARKED FOR IDENTIFICATION)</p> <p>12 Q. What we'll do is we'll take all the flags 13 and tags off this for the official copy.</p> <p>14 MS. PHARES: Why don't you take them off 15 now?</p> <p>16 MR. MONAGHAN: That's fine. They're 17 actually your flags except for one, but that's a 18 good suggestion.</p> <p>19 Q. I'm going ask you to take a look at this 20 document, Dr. Kinder. Read it over very carefully 21 and I'm going to ask you a few questions about it?</p> <p>22 MS. SAFFER: What's being looked at now?</p> <p>23 MR. MONAGHAN: This is the next exhibit. It 24 should be Exhibit-6 which was Plaintiff's 47 for 25 I.D. which is the Transformers agreement that</p>
<p style="text-align: right;">70</p> <p>1 the name Sunbow Productions, Inc./Wildstar 2 Music/Hasbro Inc. 1986.</p> <p>3 I've never been in a deposition where the 4 counsel keeps interrupting before you even get 5 halfway through whatever it is you're going to 6 say.</p> <p>7 MS. SAFFER: The copy of the agreement has 8 been faxed by my office. It's probably -- I'm 9 going to go see if I can pick it up. You may 10 continue with this.</p> <p>11 MR. MONAGHAN: Thank you very much. I'm 12 wondering if we can take a ten minute break.</p> <p>13 (SHORT BREAK)</p> <p>14 Q. Dr. Kinder, I'm going to come back to 15 testimony about a series of written documents in the 16 case that were produced by Sunbow in the fall or late 17 summer of 2004 while we were on trial and counsel for 18 Sunbow had put together a binder of various 19 agreements which were captioned Bryant and Kinder 20 Signatures Conceded and Disputed.</p> <p>21 You testified earlier about an affidavit 22 that you had put in in the case regarding a number of 23 these?</p> <p>24 A. Yes, I did.</p> <p>25 Q. I'm going to show you a document which was</p>	<p style="text-align: right;">72</p> <p>1 Gloria produced.</p> <p>2 MS. SAFFER: I don't know why I think I'm up 3 to Exhibit-9. Obviously I can't count.</p> <p>4 MS. PHARES: He's not giving numbers as 5 trial exhibits.</p> <p>6 MS. SAFFER: I see. That's why I'm all 7 screwed up.</p> <p>8 MR. MONAGHAN: It's too confusing to have 9 too many exhibit references.</p> <p>10 MS. PHARES: That's exactly the problem.</p> <p>11 Q. Have you had an opportunity to review that 12 Exhibit-6?</p> <p>13 A. Yes.</p> <p>14 Q. Okay, Dr. Kinder, I'm also showing you now, 15 we mine as well mark this as the next exhibit, 16 Exhibit-7, which is a copy of Dr. Kinder's 17 declaration which was submitted in this case back in 18 September 2004.</p> <p>19 (EXHIBIT-7 MARKED FOR IDENTIFICATION)</p> <p>20 Q. Do you recall the declaration, Dr. Kinder?</p> <p>21 A. Both or which one?</p> <p>22 Q. The declaration is Exhibit-6. Do you 23 recall signing -- is that your signature?</p> <p>24 A. Yes.</p> <p>25 Q. And now referring to Exhibit-5 --</p>

<p style="text-align: right;">73</p> <p>1 A. I have six and seven.</p> <p>2 Q. Referring to the Exhibit-6, would you take</p> <p>3 a look at the first page and tell us what that refers</p> <p>4 to?</p> <p>5 A. Refers to the Transformers composition</p> <p>6 music and lyrics.</p> <p>7 Q. And are you familiar with this document?</p> <p>8 A. Yes.</p> <p>9 Q. This was produced by Sunbow in the course</p> <p>10 of the litigation. Does this document on any page</p> <p>11 bear your signature?</p> <p>12 A. Yes, it does.</p> <p>13 Q. What page is that?</p> <p>14 A. On page four.</p> <p>15 Q. Does that have a Sunbow document production</p> <p>16 number down in the bottom?</p> <p>17 A. Yes.</p> <p>18 Q. Is that 899?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Okay. Have you ever seen this agreement</p> <p>21 before this litigation?</p> <p>22 A. Yes.</p> <p>23 Q. Have you seen it before the case?</p> <p>24 A. Well, I saw it when I signed it.</p> <p>25 Q. Now --</p>	<p style="text-align: right;">75</p> <p>1 Q. Do you have any explanation for how it is</p> <p>2 that there's a page two with a reference to Spencer</p> <p>3 Michlin in an agreement that purports to be an</p> <p>4 integrated agreement? Do you have any idea how this</p> <p>5 came about?</p> <p>6 A. I would have no idea how this came about</p> <p>7 except that someone put the document together</p> <p>8 incorrectly.</p> <p>9 Q. Now, have you ever seen a fully</p> <p>10 countersigned agreement with a signature by Griffin</p> <p>11 Bacal?</p> <p>12 A. Not that I recall.</p> <p>13 Q. And the exhibit that I've shown you here,</p> <p>14 Exhibit-6, is it?</p> <p>15 A. Yes.</p> <p>16 Q. Does Exhibit-6 bear the signature of</p> <p>17 Griffin Bacal?</p> <p>18 A. No, it does not.</p> <p>19 Q. And when you gave this declaration</p> <p>20 indicating that your signature was on page 899, did</p> <p>21 you intend to suggest that this was a valid</p> <p>22 integrated agreement?</p> <p>23 A. No.</p> <p>24 MS. PHARES: Objection, leading.</p> <p>25 Q. You were merely confirming --</p>
<p style="text-align: right;">74</p> <p>1 A. But I have an objection to this agreement.</p> <p>2 When I did --</p> <p>3 MS. PHARES: Objection. There is no</p> <p>4 question pending.</p> <p>5 Q. What is your objection to the agreement?</p> <p>6 A. My objection to the agreement is that</p> <p>7 whereas I did agree in this document that this</p> <p>8 appears to be my signature, this is not our</p> <p>9 agreement.</p> <p>10 On page two, it refers to "in the event</p> <p>11 that you determine that Anne Bryant and/or Spencer</p> <p>12 Michlin can satisfy your requirements, you agree",</p> <p>13 Spencer Michlin had nothing to do with this</p> <p>14 agreement, he did not work for us, we had no</p> <p>15 relationship with him. This is clearly from a Michlin</p> <p>16 and Company contract and is not part of the contract</p> <p>17 that I signed.</p> <p>18 Q. So --</p> <p>19 MS. PHARES: Objection. First of all, I am</p> <p>20 going to make again a continuing --</p> <p>21 MR. MONAGHAN: You don't have to. If it's</p> <p>22 continuing, it's continuing.</p> <p>23 MS. PHARES: To the fact that this case does</p> <p>24 not involve GBI. GBI is not a defendant in this</p> <p>25 case, GBI is not here.</p>	<p style="text-align: right;">76</p> <p>1 A. I was confirming, this document referred to</p> <p>2 signatures.</p> <p>3 Q. So then when counsel for Sunbow submitted</p> <p>4 to the court this binder with counsel's summary of</p> <p>5 whether or not -- with counsel's summary of what in</p> <p>6 counsel's opinion was a valid agreement or not a</p> <p>7 valid agreement, when counsel in column, under your</p> <p>8 name, says "concede signature at Sunbow 899", but</p> <p>9 then refers to contract validity and says "valid",</p> <p>10 that would not be the conclusion that one could</p> <p>11 accurately draw from your signature being conceded as</p> <p>12 valid on 899, correct?</p> <p>13 MS. PHARES: Objection. You're asking for</p> <p>14 what this witness knows about what was in</p> <p>15 Sunbow's head. He's not competent to answer</p> <p>16 that question.</p> <p>17 MR. MONAGHAN: No. You submitted this to</p> <p>18 the court.</p> <p>19 MS. PHARES: I'm not going to argue with</p> <p>20 you, Pat. I'm not arguing with you. I'm just</p> <p>21 making an objection.</p> <p>22 MR. MONAGHAN: Okay. Now I'm making a</p> <p>23 statement. You submitted this --</p> <p>24 MS. PHARES: You are here to ask questions</p> <p>25 or to answer questions and to make objections.</p>

<p style="text-align: right;">77</p> <p>1 This isn't a place for statements. You can make 2 those to the court at the right time. 3 MR. MONAGHAN: You submitted to the court 4 this binder with a series of agreements that put 5 this case on hold for two years while you 6 pursued a meritless appeal distracting all the 7 parties. 8 You've lost virtually every motion, you 9 lost all four appeals, you lost your motion for 10 reargument. You submitted this and you told 11 Judge O'Rourke that this was a valid agreement 12 because Dr. Kinder had conceded his signature. 13 That was a misrepresentation to the court. 14 MS. PHARES: Mr. Monaghan, I object to your 15 statements on the record, especially when they 16 have no basis. 17 Let's continue with this deposition because 18 if we do not finish it by the end of the day, 19 this deposition is not going to be used at 20 trial. 21 Q. Now, Dr. Kinder, are you aware of any -- 22 the existence of any agreement, valid countersigned 23 integrated agreement dealing with the Transformers 24 music composed by Anne? 25 A. No, I don't know where one is.</p>	<p style="text-align: right;">79</p> <p>1 your declaration dated September 2nd, 2004, you in 2 paragraph six appear to have stricken and -- let me -- 3 ask the question. Okay. 4 Do your initials and strike out appear in 5 paragraph six? 6 A. Yes. 7 Q. And do you know what you were striking out 8 there, can you make that out? 9 A. Looks like 901. 10 Q. I'm going to show you the page marked 11 Sunbow 0901, the personal acknowledgment page? 12 MS. PHARES: Of what? What are we talking 13 about? 14 MR. MONAGHAN: Exhibit-6. 15 A. The reason I struck it out is because this 16 is not my signature. It's Anne's signature, if it's 17 anyone's. 18 Q. You're saying that -- right, yeah. So 901 19 -- 20 A. It didn't pertain to me. 21 Q. It didn't pertain to you. What is 902? 22 A. 902 is a lead sheet with the melody of the 23 Transformers theme. 24 Q. What is a lead sheet? 25 A. A lead sheet is a musical representation on</p>
<p style="text-align: right;">78</p> <p>1 Q. Now, what would your understanding have 2 been as the person who dealt primarily with these 3 matters with Mr. Bacal, and Mr. Bacal on behalf of 4 his companies, concerning the financial arrangements 5 between Kinder Bryant and Bacal and his companies 6 related to the Transformers music? 7 MS. PHARES: Objection as to form, objection 8 as to relevance. It's a compound question. Who 9 are we talking about? 10 Q. What was the deal regarding the composition 11 of the Transformers between Bacal and your company? 12 MS. PHARES: Are we talking about GBI? Are 13 we talking about Sunbow? 14 A. Essentially, initially we created demo 15 songs for them to choose from. We ultimately decided 16 -- they ultimately decided on this song which Anne 17 Bryant had written. They paid us some fees up front 18 of the demo. At the point which it goes final or 19 they're purchasing it for air, they pay us more 20 money, pay the musicians' contracts for on air use, 21 pay the singers' contracts for on air use and they 22 put it with their commercials. 23 Q. What about writer's royalties? 24 A. We always retained our writer's royalties. 25 Q. Now, may I have the exhibit back? Now, in</p>	<p style="text-align: right;">80</p> <p>1 paper with the notes so that someone can perform a 2 song? 3 Q. Who prepared that lead sheet? 4 A. This probably was prepared by -- we used 5 to hire transcribers, music transcribers who would 6 take our charts and put them into forms that we used 7 in the studio. This would have been used with the 8 singers. 9 Q. Now with respect to the composition GI Joe, 10 you wrote GI Joe, is that right? 11 A. Yes. 12 Q. And GI Joe, I'm trying to speed this up, GI 13 Joe was in the BMI catalog but attributed to Anne, 14 correct? 15 A. GI Joe is in -- first of all, there are 16 many versions of the -- the original composition was 17 filed with ASCAP. Later, there was a GI Joe, the 18 movie, which was an adaptation of the original song 19 in which Anne composed part of the instrumental and 20 did the arrangement and some of the -- some 21 variations of the song are in her catalog. 22 Q. And as part of your settlement, you agreed 23 that even though you had composed -- you're the 24 principal composer, that that would remain in Anne's 25 catalog?</p>

<p style="text-align: right;">81</p> <p>1 A. Right.</p> <p>2 MS. PHARES: May we take a brief break?</p> <p>3 MR. MONAGHAN: Sure.</p> <p>4 (SHORT BREAK)</p> <p>5 Q. Dr. Kinder, do you know the name</p> <p>6 Dobishinski?</p> <p>7 A. Yes.</p> <p>8 Q. Who was that person?</p> <p>9 A. Bill Dobishinski was -- he was a lawyer</p> <p>10 who ran a publishing administration company so we</p> <p>11 worked with him through Sunbow Productions where our</p> <p>12 royalties would go to him, he would take a percentage</p> <p>13 for administering them and he filed the cue sheets</p> <p>14 with BMI and ASCAP. He administered the publishing.</p> <p>15 Q. I'm going to read you some testimony from</p> <p>16 the deposition of Carol Weitzman. Do you know who</p> <p>17 she is?</p> <p>18 A. Yes.</p> <p>19 Q. Who is she?</p> <p>20 A. She was the business person for Sunbow.</p> <p>21 Q. I'm reading from page 32, line 12.</p> <p>22 "Q. Bill Dobishinski?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know where he is?</p> <p>25 A. He kind of disappeared off the face of</p>	<p style="text-align: right;">83</p> <p>1 MR. MONAGHAN: This is me about to ask him a</p> <p>2 question.</p> <p>3 Q. Now, I just read you some testimony by</p> <p>4 Carol Weitzman. Does that testimony sound accurate to</p> <p>5 you in terms of the relationship of Dobishinski to</p> <p>6 Sunbow?</p> <p>7 A. Yes.</p> <p>8 MS. PHARES: Objection, foundation.</p> <p>9 A. Yes, it does.</p> <p>10 Q. It's your understanding he was Sunbow's</p> <p>11 guide, correct?</p> <p>12 A. Yes.</p> <p>13 Q. I'm just going to play a few more tunes.</p> <p>14 MR. MONAGHAN: Can we go off for a second,</p> <p>15 Jason?</p> <p>16 (SHORT BREAK)</p> <p>17 Q. I'm going to have marked as Exhibit-8, we</p> <p>18 have a disk here that has more than we need to deal</p> <p>19 with. What I'm going to do now is I'm going to play</p> <p>20 some downloads that are on this CD. However, this CD</p> <p>21 I have placed on here has other material on it that</p> <p>22 is not going to be part of the exhibit and what I'll</p> <p>23 do is we'll make a disk with just the items which</p> <p>24 I'll identify and I'm going to ask that we substitute</p> <p>25 that when that disk is made -- we'll mark it at that</p>
<p style="text-align: right;">82</p> <p>1 the earth. I don't know what happened to him.</p> <p>2 Q. Well, have you heard of a company called</p> <p>3 TAMAD?</p> <p>4 A. Oh, yeah.</p> <p>5 Q. Do you know what that stands for?</p> <p>6 A. No.</p> <p>7 Q. And he was an administrator of the</p> <p>8 publishing for Starwild and Wildstar?</p> <p>9 A. He would track the monies and hound</p> <p>10 people to get the monies in and then he would</p> <p>11 get a fee.</p> <p>12 Q. He took a fee from the monies he</p> <p>13 tracked?</p> <p>14 A. Yes.</p> <p>15 Q. Who hired him?</p> <p>16 A. Sunbow hired him.</p> <p>17 Q. To administer Sunbow's publishing</p> <p>18 rights?</p> <p>19 A. Yes.</p> <p>20 Q. Who provided the information to</p> <p>21 Dobishinski as to what compositions he was to</p> <p>22 administer?</p> <p>23 A. He got copies of the cue sheets".</p> <p>24 MS. PHARES: Objection. What is the</p> <p>25 question here, what is this?</p>	<p style="text-align: right;">84</p> <p>1 point as Exhibit-8.</p> <p>2 (EXHIBIT-8 MARKED FOR IDENTIFICATION)</p> <p>3 MS. PHARES: You have to tell us what all</p> <p>4 the -- what the contents are.</p> <p>5 MR. MONAGHAN: Yes, I do.</p> <p>6 Q. What will be Exhibit-8 when it is marked is</p> <p>7 a series of downloads of the Transformers music from</p> <p>8 a number of different sites. The first one is Hasbro</p> <p>9 which I've got the cursor on, I don't know how clear</p> <p>10 it is on the screen. The second one is Meatbee.</p> <p>11 What is Meatbee?</p> <p>12 MS. BRYANT: Meatbee is an Australian</p> <p>13 rock'n'roll group of quite a size.</p> <p>14 Q. The next one is Transformers Energon which</p> <p>15 we understand is a DVD and a show which is produced</p> <p>16 by the cartoon network. This is a download from the</p> <p>17 cartoon network.</p> <p>18 The next one is another cartoon network</p> <p>19 show with Transformers Armada and the last one is</p> <p>20 another Meatbee.</p> <p>21 MS. BRYANT: That's the sound of the</p> <p>22 Meatbee. The other was a press release.</p> <p>23 MR. MONAGHAN: I see, okay. So we don't</p> <p>24 need the press release.</p> <p>25 Q. I'm now going to play the first of the four</p>

<p style="text-align: right;">85</p> <p>1 which is downloaded from the Hasbro site.</p> <p>2 MS. PHARES: Before you do this, just stop</p> <p>3 for a moment. On the record, I want to just</p> <p>4 object as I did at trial that there is no</p> <p>5 evidence that you have shown that any of these</p> <p>6 have any connection with Sunbow and I believe,</p> <p>7 therefore, that they are irrelevant and is</p> <p>8 inadmissible as the judge ruled at trial.</p> <p>9 Q. Do you recognize that music, Dr. Kinder?</p> <p>10 A. I recognize the tune, the melody, the song.</p> <p>11 Q. Are you able to make out who the performers</p> <p>12 are?</p> <p>13 A. No.</p> <p>14 Q. And the tune, what do you recognize it to</p> <p>15 be?</p> <p>16 A. The song is the same Transformers theme</p> <p>17 that we've been discussing written by Anne Bryant.</p> <p>18 The performers, I don't know who they are.</p> <p>19 Q. Have you ever had occasion to go to this</p> <p>20 site, the Hasbro site?</p> <p>21 A. No.</p> <p>22 Q. I'm now going to play the Transformers</p> <p>23 Energon.</p> <p>24 Same questions relative to Energon?</p> <p>25 A. Yes, this is the same song. I don't know</p>	<p style="text-align: right;">87</p> <p>1 Oh, my God. That's great. Oh, my.</p> <p>2 Q. Do you recognize that melody?</p> <p>3 A. Absolutely.</p> <p>4 Q. Whose melody is that?</p> <p>5 A. Anne Bryant's melody and my lyrics.</p> <p>6 Q. Do you recognize the Transformers?</p> <p>7 A. No.</p> <p>8 MR. MONAGHAN: I don't have any further</p> <p>9 questions at this time.</p> <p>10 MS. PHARES: Should we do our lunch break</p> <p>11 now and come back or what do you want to do?</p> <p>12 MR. MONAGHAN: That's fine.</p> <p>13 (LUNCHEON ADJOURNMENT)</p> <p>14 CROSS EXAMINATION</p> <p>15 BY MS. SAFFER:</p> <p>16 Q. Good afternoon. My name is Judith Saffer.</p> <p>17 I'm the assistant general counsel at BMI. Dr. Kinder,</p> <p>18 I have just a few questions I'd like to ask you</p> <p>19 relating to the testimony that you gave earlier today</p> <p>20 when you were being questioned by Mr. Monaghan.</p> <p>21 During the course of that deposition, you</p> <p>22 were asked early on about belonging to BMI after</p> <p>23 having originally joined ASCAP and in the course of</p> <p>24 that conversation, you gave your understanding of</p> <p>25 what BMI does.</p>
<p style="text-align: right;">86</p> <p>1 who the performers are but I have seen it on</p> <p>2 television and when I saw this on television, I</p> <p>3 became very concerned because again, we're not</p> <p>4 getting payments for this.</p> <p>5 Q. That's Transformers Energon?</p> <p>6 A. Yes, nor did I have any knowledge of it</p> <p>7 before I saw it on television.</p> <p>8 Q. Do you know if it's still running?</p> <p>9 A. I don't know.</p> <p>10 Q. Did you see it on the cartoon network?</p> <p>11 A. Yes.</p> <p>12 Q. Now I'm playing Armada, Transformers</p> <p>13 Armada. Do you recognize the music?</p> <p>14 A. Yes, it's again the Transformers theme</p> <p>15 song.</p> <p>16 Q. Do you recognize the performers?</p> <p>17 A. No.</p> <p>18 Q. Have you had occasion to see this show on</p> <p>19 Cartoon Network?</p> <p>20 A. Yes, I have.</p> <p>21 Q. And they played that music in connection</p> <p>22 with that show on the Cartoon Network?</p> <p>23 A. Yes.</p> <p>24 Q. Are you familiar with Meatbe?</p> <p>25 A. No.</p>	<p style="text-align: right;">88</p> <p>1 I'd like if possible for you to elaborate</p> <p>2 on what you believe the role of BMI was in dealing</p> <p>3 with music which you had written?</p> <p>4 A. Okay. My understanding is that I would</p> <p>5 register with BMI and, therefore, anything that I</p> <p>6 composed, any music I composed would -- the agreement</p> <p>7 was it would be registered through BMI, would then</p> <p>8 administer payments as presented to them for</p> <p>9 performance royalties.</p> <p>10 I also would have understood that they</p> <p>11 would protect a title, in other words, if another</p> <p>12 title came in under the same name, then their</p> <p>13 computer or whatever would show that this title is</p> <p>14 already registered and they would either contact me</p> <p>15 and say is this the same thing, is this a different</p> <p>16 thing and go from there, try to figure it out.</p> <p>17 By the same token, that I'm representing</p> <p>18 what I write is original to me and what I file I've</p> <p>19 really participated in.</p> <p>20 Q. Where did you get this understanding that</p> <p>21 you've just mentioned, where did you get that from?</p> <p>22 A. First of all, it was explained to me, I</p> <p>23 don't remember who I met with there, but it was</p> <p>24 explained to me that's what they do. Secondly, it's</p> <p>25 just logical.</p>

<p style="text-align: right;">89</p> <p>1 If I write a song and it has a certain 2 title and somebody else files something five years 3 later that has the same title, only they put their 4 name on it, somebody should ask a question. 5 Q. Are you aware of how many writers and 6 publishers are represented by BMI? 7 A. I don't think that's relevant because -- 8 Q. Excuse me. I asked you a question. You 9 either have the answer or you don't know the answer 10 or whatever, but you answer the question that's 11 asked, please. 12 A. Okay. No, I would say thousands. 13 Q. Okay. 14 A. I would expect it to be thousands. 15 Q. Would you be surprised if I told you it was 16 over 300,000? 17 A. No. 18 Q. Do you have any idea of how many musical 19 works are licensed by BMI? 20 A. No, I don't. 21 Q. Would you be surprised if I told you that 22 it was many millions of compositions? 23 A. No, that wouldn't surprise me. 24 MR. MONAGHAN: I just have to assert an 25 objection that I don't think the numbers mean</p>	<p style="text-align: right;">91</p> <p>1 numbers and some of the numbers, the percentages of 2 the same number were changed. 3 Q. Could you give me specifics? 4 A. I don't have that with me. 5 Q. How do you know that happened? 6 A. I don't have it with me. I said I've seen 7 it in my own catalog. 8 Q. Okay. 9 A. In my own catalog, the number, the 10 percentage that was allotted to me under a title with 11 a number was changed without any knowledge or 12 question to me. 13 Q. Have you reported that to BMI? 14 A. No. 15 Q. Why not? 16 A. Because my catalog at this point is small 17 and I've been really busy with other things, going to 18 medical school, becoming a physician, seeing 19 patients. I only became aware of it in the last 20 couple years. It was already being dealt with in 21 this lawsuit, not for me personally, but the issue. 22 Q. Are you aware of the procedures that BMI 23 follows in registering and crediting musical 24 compositions? 25 A. I didn't register my own compositions most</p>
<p style="text-align: right;">90</p> <p>1 anything. They're not relevant. In the age of 2 computers, it shouldn't be a difficult task. 3 MS. SAFFER: Excuse me, Pat, this is not 4 your deposition. The witness will answer the 5 questions I ask and the importance of those 6 questions or relevance of those questions. 7 ultimately will be determined by the judge. 8 MR. MONAGHAN: I'm still entitled to put an 9 objection on the record. 10 MS. PHARES: Yes, but not a speaking 11 objection and certainly not under the court's 12 new rules about speaking objections. 13 MR. MONAGHAN: I'll make whatever objections 14 I think are appropriate. 15 Q. Are you aware that there are many, many 16 different compositions with the same title? 17 A. I know there are some and generally, they 18 have some method either by the number or something to 19 denote which one is which. 20 Q. Who is they? 21 A. BMI. 22 Q. How do you know, who explained to you or 23 what documents did you rely on to get your 24 understanding of how BMI operates? 25 A. Well, first of all, all of my titles have</p>	<p style="text-align: right;">92</p> <p>1 of the time. It was done through the publishing 2 company. 3 Q. Are you aware that BMI takes registrations 4 of music for TV and background music theme from 5 production companies? 6 A. Yes. 7 Q. Are you aware of who the copyright owner is 8 on the music that has been registered with BMI? 9 MR. MONAGHAN: Can we be more specific? Is 10 this a hypothetical? 11 MS. SAFFER: Yeah, we're talking about BMI 12 procedures which Dr. Kinder has indicated he has 13 some knowledge or understanding and I'm trying 14 to find out the extent of his alleged expertise. 15 MR. MONAGHAN: You're asking a general 16 question? 17 MS. SAFFER: Yes. 18 A. First of all, I don't claim to be an expert 19 on BMI. All I see is that they are an agent that I 20 signed with and trusted them to follow the money that 21 was entitled to be given to me. 22 I didn't expect them to be a policeman but 23 at the same time, in order to pay me appropriately, I 24 would expect that they have to have some knowledge of 25 what's being sent to them, which composition it is.</p>

<p style="text-align: right;">93</p> <p>1 Q. What makes you believe that BMI has not 2 paid you appropriately?</p> <p>3 A. Because the percentages on my statements 4 changed.</p> <p>5 Q. Why is that inappropriate?</p> <p>6 A. Because why would a composition change? 7 It's registered 50/50 and suddenly it comes in with 8 new composers at different percentages.</p> <p>9 Q. Are you aware that a writer at BMI receives 10 royalties pursuant to their agreement with BMI?</p> <p>11 A. Right.</p> <p>12 Q. And that in most cases and we are talking 13 generalities, the publisher is the copyright owner 14 and also receives royalties?</p> <p>15 A. Right.</p> <p>16 Q. Are you aware that under the copyright law, 17 the copyright owner has the right to do with a 18 composition whatever he, she or it may wish?</p> <p>19 MR. MONAGHAN: I have to object that you are 20 asking for a legal conclusion here.</p> <p>21 MS. SAFFER: You, during the course of the 22 direct, asked Dr. Kinder for many conclusions 23 that were, as far as I was concerned, legal 24 conclusions. You asked him to interpret a 25 contract.</p>	<p style="text-align: right;">95</p> <p>1 and that's a simple explanation of my understanding.</p> <p>2 Q. Where did you get your understanding that 3 BMI had a fiduciary duty to you?</p> <p>4 A. When I signed the contract, that's my 5 understanding. I can't tell you where I got it. 6 That's just my understanding.</p> <p>7 Q. Would you be surprised to learn that there 8 have been cases which have said that BMI's 9 relationship with its writers and publishers is 10 contractual and not a fiduciary relationship?</p> <p>11 MR. MONAGHAN: That's improper, that's an 12 improper question. It assumes facts not in 13 evidence and I don't care if he's surprised or 14 not, it's not going to add anything to the 15 relevant information.</p> <p>16 MS. SAFFER: The witness has used the term 17 of art and if he's using it, I would expect that 18 he knows what in fact he is stating. 19 If he's using it and is not aware of what 20 it means, I would suggest that he shouldn't use 21 that terminology.</p> <p>22 MR. MONAGHAN: I'm addressing only a 23 question that says would you be surprised that 24 there's case law out there.</p> <p>25 MS. SAFFER: This is cross-examination and</p>
<p style="text-align: right;">94</p> <p>1 I'm asking the same thing. If he has no 2 knowledge, he has no knowledge. He can answer 3 that way. I'm asking what his understanding is.</p> <p>4 A. My understanding of what, Miss Saffer?</p> <p>5 Q. Excuse me?</p> <p>6 A. I don't understand the question.</p> <p>7 Q. During the course of your direct testimony, 8 your lawyer, Mr. Monaghan, asked you what the role of 9 the publisher was and you responded, correct?</p> <p>10 A. He asked me what my understanding of it 11 was. I don't claim to be a lawyer.</p> <p>12 Q. I'll also ask you what your understanding 13 is. In each one of these questions that I'm asking, 14 you can only give your understanding.</p> <p>15 A. Right. And it should be made clear I'm not 16 trying to be a lawyer or to interpret any contract in 17 a legal manner, just my own understanding of what I 18 thought the provisions of that contract relating to 19 me are.</p> <p>20 So, what is a publisher? They are 21 essentially administrating and marketing the 22 copyright so that it will benefit them and benefit me 23 as the writer. It's administered through BMI who also 24 since they are administering money, should have some 25 fiduciary responsibility to see that it's accurate</p>	<p style="text-align: right;">96</p> <p>1 there is a little bit more latitude in 2 cross-examination. When you are on direct, you 3 can't lead a witness. On cross-examination, you 4 are allowed to ask the witness questions that 5 might be considered a leading question on 6 direct.</p> <p>7 MR. MONAGHAN: I'm not saying you can't ask 8 leading questions. I'm saying I don't believe 9 you should ask a question that assumes a fact 10 that's not in evidence as though it's a matter 11 of fact.</p> <p>12 MS. PHARES: We're not at trial.</p> <p>13 Q. During direct, there were some questions 14 asked about the contract which you signed with BMI. 15 The contract that was produced was not legible. It 16 was a xerox copy of something that had come out of 17 microfilm.</p> <p>18 During the break with the consent of all 19 the attorneys, I got a form agreement from our office 20 which is I believe the same form of agreement that 21 you signed although this is not your actual 22 agreement, it was distributed to everybody, they have 23 it. I'd like to mark this as Kinder-9.</p> <p>24 (EXHIBIT 9 MARKED FOR IDENTIFICATION)</p> <p>25 Q. This has been produced simply because it is</p>

<p style="text-align: right;">97</p> <p>1 more legible than the one that was brought by your 2 attorney. 3 During the course of direct, your attorney 4 referred you to paragraph 11. Can you look at that 5 paragraph now? 6 A. Yes, ma'am. 7 Q. The paragraph begins with the words "we 8 shall have the right", correct? 9 A. Upon written notice to me, okay. 10 Q. Who is the we in that paragraph, what is 11 the we? 12 A. I think I'd have to read the whole 13 contract. Just jumping in, I would think it was BMI. 14 Q. It is BMI. Let me remind you that you were 15 the one who pointed us to this provision so I presume 16 that you had reviewed it before we began? 17 A. I didn't point you there. The lawyer asked 18 me a question about it. 19 Q. Your lawyer asked you a question about it, 20 correct? 21 MR. MONAGHAN: I asked him a question about 22 it. 23 Q. Dr. Kinder, didn't you state in the 24 beginning of your examination that Patrick Monaghan 25 was acting as your counsel for purposes of this</p>	<p style="text-align: right;">99</p> <p>1 Q. I'm giving you an opportunity to say it 2 again. 3 A. I don't quite know how to answer those 4 questions. You're making conclusions that I don't 5 feel is what I said. 6 Q. What does paragraph 11 mean to you? 7 A. Okay. To me, and I'm not a lawyer and I 8 don't have a lawyer to interpret it for me, it says 9 that you have the right to exclude upon written 10 notice to me any work which in your opinion infringes 11 on the copyright of another composition. That's 12 exactly what I'm talking about. 13 Q. That means that BMI has the right to 14 exclude a work from licensing? 15 A. Right. 16 Q. If we believe it's an infringing 17 composition? 18 A. And infringing compositions came in which 19 infringed on my work and you didn't exclude them and 20 they should have been. 21 Q. No. This provision doesn't give you any 22 rights, it gives BMI rights -- 23 A. I understand that -- 24 Q. It gives us rights vis-a-vis a user of the 25 music. It says we have the right to exclude a work</p>
<p style="text-align: right;">98</p> <p>1 deposition? 2 A. For purposes of this deposition, I don't 3 really -- I don't think of him as my counsel for this 4 deposition. He is representing some interest for me 5 in the lawsuit. 6 MR. MONAGHAN: That wasn't said, for the 7 record. I clearly said I'm not here 8 representing -- the witness was without counsel. 9 A. I don't have representation really. 10 Q. Let's continue with the review of the 11 contract. 12 A. I haven't seen this contract, not to be 13 volunteering too much, but I haven't seen this 14 contract in years until today. 15 Q. You said during the course of your direct 16 testimony that you believed that this paragraph put 17 upon BMI an obligation to protect your rights. What 18 in this paragraph gives you that belief? 19 MR. MONAGHAN: That's an incorrect 20 characterization. I object to it. 21 MS. SAFFER: Okay, let's start over. 22 MS. PHARES: Let him answer. 23 A. I just have a little bit of a problem that 24 I feel like you're putting -- you're summarizing what 25 I said and it's not what I said.</p>	<p style="text-align: right;">100</p> <p>1 if we believe we need to. There is nothing in this 2 provision that gives you any rights, nor is there 3 anything in this provision which puts any obligations 4 on BMI. 5 If you disagree with what I'm saying, I'd 6 like you to point the language out to me. 7 A. I disagree with it because I think it 8 implies that by you telling that to me, you're 9 telling that to any other writer who puts a 10 composition in and my composition percentages were 11 changed and this paragraph should have been 12 implemented by BMI to the person infringing on my 13 copyright. 14 Q. And how do you think this paragraph in any 15 way puts upon BMI an obligation to take a position 16 vis-a-vis one BMI writer versus another, where in 17 this paragraph does it obligate BMI to protect you 18 and, therefore, perhaps damage another BMI writer? 19 A. If I'm signing a contract with BMI that 20 doesn't offer me any protection or imply any 21 responsibility of BMI to see that someone won't come 22 in and steal my copyright percentage, why would I be 23 with you at all? What is your responsibility to me 24 then? 25 Q. Have you read your contract?</p>

<p style="text-align: right;">101</p> <p>1 A. Not lately.</p> <p>2 Q. Did you read it when you signed it?</p> <p>3 A. Yes, I did.</p> <p>4 Q. And obviously you thought there was</p> <p>5 something worthwhile in there which is why you signed</p> <p>6 it?</p> <p>7 A. Right, but I also thought it would protect</p> <p>8 my -- help -- not full responsibility, the</p> <p>9 publisher has responsibility, I understand that, but</p> <p>10 if you're collecting money on my behalf for titles</p> <p>11 registered to me, then I expect you to know what</p> <p>12 those titles are and be sure that an outside source</p> <p>13 does not come in and change my percentage.</p> <p>14 Q. Where in the contract does it put that</p> <p>15 obligation on BMI?</p> <p>16 A. I don't know. I do think that this</p> <p>17 paragraph has some implication of that because you're</p> <p>18 telling me that if I try to infringe on another</p> <p>19 copyright, you have the right to refuse it.</p> <p>20 Therefore, you're telling everyone else who signs,</p> <p>21 you have the right to refuse anything that infringes</p> <p>22 on the copyright of something already registered</p> <p>23 here.</p> <p>24 Q. BMI has a right to exclude a composition,</p> <p>25 BMI has no obligation to take a position?</p>	<p style="text-align: right;">103</p> <p>1 A. Yes, it could be a production company. It</p> <p>2 could also be the administrator which was Bill</p> <p>3 Dobislinski at some point.</p> <p>4 Q. Do you think BMI registers compositions for</p> <p>5 people?</p> <p>6 A. No, no.</p> <p>7 Q. In your attempt to understand what BMI's</p> <p>8 obligations are to you, have you ever read any of the</p> <p>9 materials on, for example, the BMI web site or any of</p> <p>10 the printed materials distributed by BMI talking</p> <p>11 about what role BMI plays for its writer and</p> <p>12 publisher?</p> <p>13 A. I don't think there was any web site at the</p> <p>14 time that I signed this.</p> <p>15 Q. I said or printed materials?</p> <p>16 A. No.</p> <p>17 MR. MONAGHAN: Printed materials other than</p> <p>18 this?</p> <p>19 MS. SAFFER: Yes, other than this agreement.</p> <p>20 A. I read -- they gave me a packet when I</p> <p>21 joined and I read that. Everything was fine for</p> <p>22 years, the relationship was fine for a very long</p> <p>23 time. There weren't any problems.</p> <p>24 Q. In fact, you received hundreds of thousands</p> <p>25 of dollars from BMI over the years, didn't you?</p>
<p style="text-align: right;">102</p> <p>1 A. There's an implied obligation.</p> <p>2 Q. Implied where?</p> <p>3 A. To me. I'm not a lawyer.</p> <p>4 MR. MONAGHAN: You're arguing with the</p> <p>5 witness.</p> <p>6 A. I'm not a lawyer and I don't claim to be.</p> <p>7 I'm saying I put my trust in BMI. Okay? Before my</p> <p>8 composition's percentages were changed, someone</p> <p>9 should have contacted me and asked me if this was</p> <p>10 appropriate. If you didn't think that was</p> <p>11 appropriate, why did you have me sign that paper I</p> <p>12 gave you this morning?</p> <p>13 Q. Excuse me. I am taking your deposition,</p> <p>14 you are not taking mine. I am the lawyer, you are</p> <p>15 witness. You don't ask questions, you answer them.</p> <p>16 A. I have a question.</p> <p>17 MR. MONAGHAN: If you want to beat a dead</p> <p>18 horse, go ahead.</p> <p>19 MS. SAFFER: Thank you.</p> <p>20 Q. Have you had -- do you have any knowledge</p> <p>21 of who registers compositions with BMI?</p> <p>22 A. In our case, I believe it was the</p> <p>23 publishing company.</p> <p>24 Q. Do you believe as well that it may be a</p> <p>25 production company?</p>	<p style="text-align: right;">104</p> <p>1 A. Yes, I have.</p> <p>2 Q. Having discussions about registrations</p> <p>3 having been changed and in that regard, I'd like to</p> <p>4 refer you to a copy of your settlement agreement in</p> <p>5 the -- I'm going refer to it as the first litigation</p> <p>6 with Anne Bryant. I don't know in fact how many</p> <p>7 times you've been involved in litigation with her --</p> <p>8 oh, excuse me, it's not the settlement agreement.</p> <p>9 It's the dissolution agreement.</p> <p>10 A. Okay.</p> <p>11 Q. This document was already produced as</p> <p>12 Defendant's Exhibit-S.</p> <p>13 MS. PHARES: This is actually in evidence at</p> <p>14 trial.</p> <p>15 Q. I refer you please to page six of that</p> <p>16 agreement and ask if you recognize the signatures?</p> <p>17 A. Yes, that looks like my signature and</p> <p>18 Anne's signature.</p> <p>19 Q. On page two of this agreement, paragraph 4A</p> <p>20 talks about the way various compositions are going to</p> <p>21 be registered with BMI and how you and Ms. Bryant</p> <p>22 will split royalties on a number of compositions,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. Did you ever contact BMI and provide them</p>

<p style="text-align: right;">105</p> <p>1 with a copy of this agreement and ask that changes be 2 made?</p> <p>3 A. No, because it didn't require BMI to make 4 any changes.</p> <p>5 Q. This is exactly the way everything was 6 being paid?</p> <p>7 A. Yes.</p> <p>8 Q. I'd like to refer you to the settlement 9 agreement in this litigation in which you were 10 originally a defendant. It's already Defendant's 11 Exhibit-F at trial.</p> <p>12 This document refers to various percentages 13 of compositions. Are you sure that BMI's records 14 reflected these percentages?</p> <p>15 A. No, I don't think these were enacted by BMI 16 yet.</p> <p>17 Q. Did you ever ask BMI to make these changes?</p> <p>18 A. No. Anne was going to take care of that.</p> <p>19 Q. Did you ever submit to BMI prior to this 20 morning a document which would clearly allow BMI to 21 make the changes that Anne requested?</p> <p>22 A. No. This morning I submitted it.</p> <p>23 Q. This morning you submitted it?</p> <p>24 A. Uh huh.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">107</p> <p>1 this lawsuit?</p> <p>2 A. I'm really not -- I'm not an expert on the 3 legalities of this, but I don't think that the writer 4 owns the copyright. I think we retained the right, 5 the writer's royalties.</p> <p>6 Q. What do you mean by the writer's royalties?</p> <p>7 A. The writer's share of performance royalties 8 distributed by BMI.</p> <p>9 Q. And what is your understanding as to why 10 you are entitled to receive those rights?</p> <p>11 A. Because I wrote the composition, it was 12 filed with BMI as me as the composer or one of the 13 composers with a certain percentage due me and as it 14 comes into BMI that it's been performed, I should be 15 paid for the performance.</p> <p>16 Q. If you believe that somebody has made an 17 unauthorized use of music that you have written, what 18 do you believe your remedy is?</p> <p>19 A. First, ask BMI if they can straighten it 20 out. Second, go back to the publisher and see how it 21 was filed wrong and if they don't correct it, sue.</p> <p>22 Q. What about the individual that you feel has 23 made an unauthorized new version, do you feel they 24 have any responsibility?</p> <p>25 A. Yes, I do.</p>
<p style="text-align: right;">106</p> <p>1 MR. MONAGHAN: For the record, is that the 2 letter that --</p> <p>3 MS. SAFFER: Yes, the letter agreement which 4 was given to me before the deposition began this 5 morning and not prior to.</p> <p>6 MR. MONAGHAN: I understand what you're 7 saying. That's the one that we've been 8 furnished a copy of?</p> <p>9 MS. SAFFER: Right.</p> <p>10 MR. MONAGHAN: Can we also impose upon you 11 to send a copy of the signed agreement?</p> <p>12 MS. SAFFER: Absolutely.</p> <p>13 Q. Are you aware of who owns the rights in the 14 compositions which are involved in this lawsuit?</p> <p>15 MR. MONAGHAN: Object.</p> <p>16 MS. SAFFER: I will clarify.</p> <p>17 MR. MONAGHAN: I want to ask which 18 particular rights.</p> <p>19 A. Which rights?</p> <p>20 Q. Do you know who the copyright owner is of 21 the compositions involved in this litigation?</p> <p>22 A. I believe the copyright is owned by the 23 publishing company.</p> <p>24 Q. Accordingly, you're not claiming to be the 25 copyright owner of the music in any of the music in</p>	<p style="text-align: right;">108</p> <p>1 Q. Okay.</p> <p>2 MS. SAFFER: I have no further questions.</p> <p>3 Thank you.</p> <p>4 MR. MONAGHAN: I'll reserve re-direct until 5 Gloria is done.</p> <p>6 CROSS EXAMINATION</p> <p>7 BY MS. PHARES:</p> <p>8 Q. Dr. Kinder, for purposes of this 9 examination, I am Gloria C. Phares. Actually, I'm 10 Gloria C. Phares all the time.</p> <p>11 I'm also representing Sunbow Production, 12 Inc., okay? I'd like to explore a little bit about 13 this relationship that you have with Mr. Monaghan.</p> <p>14 You say that he's not representing you for 15 this deposition, is that correct?</p> <p>16 A. Well, I didn't feel that he was, no.</p> <p>17 Q. You had another lawyer when you were sued 18 in this lawsuit by Miss Bryant, isn't that correct?</p> <p>19 A. That's true.</p> <p>20 Q. And but you say -- Mr. Monaghan represents 21 you to the extent your interests are the same as, I 22 think you said, or overlaps with Miss Bryant's?</p> <p>23 A. Right.</p> <p>24 Q. To what extent do your interests overlap?</p> <p>25 A. Well, essentially what happened was and</p>

<p style="text-align: right;">109</p> <p>1 this is really the biggest problem I have with BMI is 2 that BMI, by allowing these percentages to be 3 changed, put me in the position of appearing to be in 4 agreement with these changes which I had no knowledge 5 of or anything to do with. That's how I got named in 6 this lawsuit.</p> <p>7 Once it became clear what the lawsuit was 8 about, it was very easy to understand that Anne and I 9 were actually on the same side. So going through the 10 understanding of what the lawsuit was about with my 11 lawyer took some time, but once it became clear to 12 both to Anne Bryant and me that neither of us had any 13 participation or knowledge of these changes and that 14 we were actually on the same side of this, we both 15 had our catalogs altered, then we could come to a 16 settlement about it because there was no disagreement 17 any further.</p> <p>18 Q. And you came to a settlement in this case 19 in 2001, is that correct?</p> <p>20 A. I'm not good with the years. 2001.</p> <p>21 Q. And when did you retain Mr. Monaghan to 22 represent you with respect to the interests that 23 overlap with Ms. Bryant's interests?</p> <p>24 A. Some time after that. I'm not quite sure. 25 I'm not quite sure how long after.</p>	<p style="text-align: right;">111</p> <p>1 A. Maybe.</p> <p>2 Q. And who participated in your conversation 3 with Mr. Monaghan last night?</p> <p>4 A. It was Mr. Monaghan, Miss Bryant and 5 myself.</p> <p>6 Q. Do you have a joint cooperation agreement 7 with Miss Bryant?</p> <p>8 A. I don't know what that means.</p> <p>9 Q. Have you ever signed a document that is a 10 joint cooperation agreement or a joint --</p> <p>11 MR. MONAGHAN: Defense agreement.</p> <p>12 MS. PHARES: It's not a defense agreement, 13 you're the plaintiff.</p> <p>14 MR. MONAGHAN: Offense agreement.</p> <p>15 Q. An agreement to join and to have the same 16 interests in this lawsuit?</p> <p>17 A. I don't know -- an agreement with Anne, 18 no, I don't think so. I'm not sure what that is.</p> <p>19 Q. What did you discuss with Mr. Monaghan last 20 night?</p> <p>21 MR. MONAGHAN: Just one second. I'm not 22 going to foreclose your opportunity to ask about 23 this because I'm sure it's a subject of great 24 curiosity, but I don't want anything -- my 25 allowing these questions to be interpreted as</p>
<p style="text-align: right;">110</p> <p>1 Q. Was it more than six months ago?</p> <p>2 A. Yes.</p> <p>3 Q. Was it more than a year ago?</p> <p>4 A. I think it was three years ago maybe, four. 5 I'm sorry, I don't know the exact date. I did sign a 6 document with him.</p> <p>7 Q. With Mr. Monaghan?</p> <p>8 A. Yes.</p> <p>9 Q. An engagement letter, is that what you 10 signed with Mr. Monaghan?</p> <p>11 A. I don't know what the title of it would be.</p> <p>12 Q. And are you paying Mr. Monaghan legal fees 13 or is he --</p> <p>14 A. Contingency.</p> <p>15 Q. Do you speak regularly with Mr. Monaghan 16 about this case?</p> <p>17 A. No. There hasn't been anything to discuss 18 because it's been on hold for so long.</p> <p>19 Q. When is the last time you spoke to Mr. 20 Monaghan?</p> <p>21 A. Last night.</p> <p>22 Q. And before that?</p> <p>23 A. Before that, I don't know, probably a year 24 or two.</p> <p>25 Q. Maybe more than two years?</p>	<p style="text-align: right;">112</p> <p>1 any kind of a waiver of any attorney/client 2 privilege beyond limited to the discussions last 3 night. I don't care what you ask about last 4 night, that's fine. But we're not waiving any 5 privileges that belong to either Dr. Kinder or 6 Anne Bryant with respect to any other 7 conversations at any other time.</p> <p>8 So feel free to enquire about whatever was 9 said last night.</p> <p>10 A. It was really just a review because you 11 know I'm a doctor now, I have a very busy practice, I 12 haven't been involved in this case so -- but I have 13 signed documents so basically what we did last night 14 was reviewed documents that I had already signed, for 15 instance, this document.</p> <p>16 Q. By this document, you're referring to the 17 stipulation of settlement without prejudice?</p> <p>18 A. No, not that.</p> <p>19 Q. Which document?</p> <p>20 A. Yes, I took a brief look at this last night 21 but mostly it was the signature pages.</p> <p>22 Q. I tell you what, would you hand me the one 23 you're looking at so we're sure we're both talking 24 about the same thing? All right. What the witness 25 has handed me is an unmarked copy but which appears</p>

<p style="text-align: right;">113</p> <p>1 to be identical, is what I think has Mr. Monaghan's 2 784 number on top of it and on the Defendant's 3 Exhibit-F which is in evidence at trial. The 4 production numbers are 3544 through 3549. 5 MR. MONAGHAN: Are those my numbers? Yeah, 6 that's fine. 7 A. Basically it was a simple meeting just kind 8 of going through the documents I've already signed in 9 reference to the case, particularly the signature 10 pages where I said this is my signature, this isn't 11 my signature. We discussed some of the settlement 12 agreements we had had before. 13 It was just kind of bringing me back up to 14 date because I haven't had my mind in this for quite 15 a while. So, it was basically a review of what had 16 already taken place and my own involvement. 17 Q. Did you look at any documents that 18 Mr. Monaghan did not introduce today at the 19 deposition? 20 A. Any document, I might have. 21 Q. Did you look at any correspondence with 22 third parties? 23 A. I saw -- there was a correspondence between 24 Bill Dobishinski and Sunbow I think or their lawyer 25 talking about or -- there were a couple</p>	<p style="text-align: right;">115</p> <p>1 very interesting that Sunbow's own lawyer told them 2 that they owed us royalties. 3 Q. And did Ms. Bryant make any comments about 4 the letter to you? 5 A. No. 6 Q. Was she entirely silent during this 7 conversation? 8 A. No but -- 9 MR. MONAGHAN: Which one, about the letter 10 or in general? 11 Q. Did she make any comments about any of the 12 documents that were provided? 13 A. Mostly Miss Bryant got us take-out food. 14 Q. I'm not talking about what she mostly did. 15 I asked you whether or not she had any comments about 16 any of the documents that were provided to you? 17 A. Very few. This was mostly a discussion 18 between Patrick and myself. I'm sorry. 19 Q. What if anything did Mr. Monaghan tell you 20 about these documents? 21 A. He just said here's the document and you 22 might find this interesting and I did. 23 Q. Did he point out any sections of the 24 documents? 25 A. Not that I recall.</p>
<p style="text-align: right;">114</p> <p>1 correspondence, that one which had to do with the 2 fact that the Jen agreement had taken a long time to 3 negotiate. 4 In fact, we were way into production before 5 we ever signed that agreement. That's why we didn't 6 even remember signing it. There was another 7 correspondence from Sunbow's lawyer to Sunbow 8 explaining to them that he felt they had an 9 obligation due to the contract to pay the -- 10 Q. I'm just asking you what he showed you. 11 A. I'm trying to explain it. 12 Q. We're going to talk about that letter. 13 MR. MONAGHAN: Let him finish his answer. 14 A. That's the document, I found that one 15 particularly interesting that their own lawyer told 16 them they owed us money. 17 Q. Were there any other documents that you 18 looked at that Mr. Monaghan did not introduce today? 19 A. There are certainly no documents that 20 hadn't already been introduced into evidence so there 21 was a lot of paperwork and I don't remember every 22 document he introduced today. 23 Q. The section that you found so interesting 24 in that letter, who pointed that out to you? 25 A. He just showed me the letter and I found it</p>	<p style="text-align: right;">116</p> <p>1 Q. You read all the documents last night? 2 A. This is a letter, we're talking about a 3 letter. The letter wasn't long. 4 Q. You're now just referring to the letter 5 from the Sunbow lawyer. Who was the letter to, do you 6 remember that? 7 A. It might have been to Carol Weitzman. 8 Q. And do you recall who the recipients and 9 the senders were of the other correspondence that you 10 saw? 11 A. I don't remember the name of the lawyer for 12 Sunbow but he was the guy who wrote the agreements. I 13 also saw some testimony, printed testimony from the 14 Sunbow lawyer when he testified in deposition or 15 court, one or the other. 16 Q. Anything else? 17 A. No, not that I recall. Patrick simply said 18 go in, tell the truth, tell them what your 19 understanding of this is. We reviewed documents that 20 I had already signed -- 21 Q. The only question that's pending is did you 22 see anything else? 23 A. There were a lot of papers, I'm not sure. 24 Q. Well, as we go through the papers that I'm 25 offering, if there's anything you saw last night that</p>

<p style="text-align: right;">117</p> <p>1 has not already been admitted here today, I want to 2 know about it. 3 A. Okay. 4 Q. Are you aware of what positions, what 5 position Ann Bryant is taking in the current lawsuit? 6 A. I believe I am. 7 Q. Would you tell me what your understanding 8 is of those positions? 9 A. The position that the -- that Sunbow and 10 the publishing companies have not fulfilled their 11 obligations to us by licensing out the works that we 12 had created to other companies, for instance, the 13 Rhino Productions, etc., etc. and not fulfilling 14 their obligation to her in terms of payment that 15 would have been due. 16 Q. Did you discuss that last night? 17 A. No. 18 Q. Not at all? 19 A. No. 20 Q. Have you ever discussed that with 21 Miss Bryant? 22 A. Yeah, I think I've discussed it with her in 23 the past. That's why we didn't need to discuss it 24 then. 25 Q. When did you discuss it with her in the</p>	<p style="text-align: right;">119</p> <p>1 A. Yes. 2 Q. And did she explain how it was that she 3 thinks that Sunbow is not complying with its 4 obligations? 5 A. Well, I think I understood that through my 6 lawyer. I didn't need to talk to Anne about that. My 7 lawyer explained that here's what the case is, here's 8 what the -- what she's suggesting and I didn't need 9 Anne to explain it to me. I needed my -- my lawyer 10 already explained it to me. 11 Q. Whether your source was your lawyer or Ms. 12 Bryant, what was it your understanding -- what was 13 your understanding of the way in which Sunbow was not 14 fulfilling its obligation? 15 A. I think I already answered that. They were 16 licensing our works to other entities charging a lot 17 of money for it and not fulfilling their obligation 18 to us per our contracts. 19 Q. I see. So you understood that you had an 20 entitlement to something pursuant to your written 21 agreements, is that correct? 22 A. Could you say that a little more in 23 English? 24 Q. You understood that you had a right to 25 receive monies under your agreements?</p>
<p style="text-align: right;">118</p> <p>1 past? 2 A. That's what the lawsuit is about. 3 Q. I asked you when, that was the question. 4 When did you discuss it with her? 5 A. When the lawsuit first happened when it was 6 first filed. 7 Q. You mean when it was first filed against 8 you? 9 A. Yes. 10 Q. So this is in 2000? 11 A. Okay, yes. We didn't speak personally 12 initially but over time, as things became clear that 13 we were in the same boat, we started talking 14 personally, not just through lawyers. 15 Q. And was that after you had signed your 16 settlement agreement as well? 17 A. No, that was before. 18 Q. Before you signed your settlement 19 agreement. 20 A. You mean this current settlement agreement? 21 Q. The one that you signed with Miss Bryant 22 settling her case against you? 23 A. This current case, yes. 24 Q. So you began talking to her before that, 25 before 2001?</p>	<p style="text-align: right;">120</p> <p>1 A. Yes. 2 Q. You just said your contracts. I said 3 agreements, but it's the same thing. 4 A. Yeah, yes, ma'am. 5 Q. And those are the, for example, the written 6 agreements that we were looking at earlier, is that 7 correct? 8 A. The agreements like for the Jem Show, yes. 9 Q. And you spoke about that with Ms. Bryant 10 some time beginning in, before 2001 and afterwards, 11 is that correct? 12 A. Yes. 13 Q. I'd like to go back to your declaration 14 about your signatures which is Exhibit-7. Could you 15 tell me who drafted this agreement? 16 MR. MONAGHAN: Who drafted the declaration? 17 Q. I beg your pardon. Who drafted the 18 document, the declaration? 19 A. I figure Patrick did, but I don't really 20 know. 21 Q. Was Mr. Monaghan representing you at the 22 time that you drafted this? 23 A. I don't think so. 24 Q. This was a September 2004, and you do not 25 believe he was representing you?</p>

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<p>1 A. Oh, he may have been. I really don't know.</p> <p>2 Q. So you don't know when he became -- if he</p> <p>3 was your lawyer before or after 2004?</p> <p>4 A. I think I signed that agreement with him</p> <p>5 before that but I'm not sure what the date was. We</p> <p>6 need to get that document.</p> <p>7 Q. You mean you think you signed your</p> <p>8 engagement with him before then?</p> <p>9 A. If that's what you call it.</p> <p>10 Q. Or the agreement by which you made an</p> <p>11 arrangement to pay Mr. Monaghan?</p> <p>12 A. Probably before this. I'm sorry I can't be</p> <p>13 more specific. I should have looked at it more</p> <p>14 closely.</p> <p>15 Q. Do you remember, was it sent to you in</p> <p>16 draft and with the documents that you referred to, is</p> <p>17 that how you did this?</p> <p>18 A. This?</p> <p>19 Q. Yes.</p> <p>20 A. I think this is the only one.</p> <p>21 Q. I'm now referring to the Kinder Exhibit-7.</p> <p>22 So are you saying you received it, you compared it</p> <p>23 with the documents that were provided to you and then</p> <p>24 --</p> <p>25 A. No, the documents were provided to me. I</p>	<p>1 Q. And earlier you said that you also</p> <p>2 negotiated contracts for Michlin and Company, is that</p> <p>3 correct?</p> <p>4 A. Sometimes, yes.</p> <p>5 Q. And you were negotiating with the</p> <p>6 advertising companies, is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And --</p> <p>9 A. We also had a business person. It wasn't</p> <p>10 only me but yes, I was involved in it.</p> <p>11 Q. And you say that you used the standard</p> <p>12 contract when you were negotiating with those --</p> <p>13 A. We would start with the standard contract.</p> <p>14 Q. And you said that we retained all</p> <p>15 publishing and all writers' shares?</p> <p>16 A. In our initial standard contract.</p> <p>17 Q. And your standard contract was between</p> <p>18 Michlin and Company and the advertising company, is</p> <p>19 that correct?</p> <p>20 A. Correct.</p> <p>21 Q. Do you recall whether or not those --</p> <p>22 those agreements included any provisions relating to</p> <p>23 copyrights?</p> <p>24 A. The standard agreement that we started with</p> <p>25 retained ownership of the copyright to the company</p>
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<p>1 I went through them personally and determined which</p> <p>2 signatures I believed were mine and which were not</p> <p>3 and I reported to him which documents I felt I had</p> <p>4 signed and which ones I had not, gave him the numbers</p> <p>5 of the documents and then this was drawn up. Then I</p> <p>6 corrected it -- as far as I know, there was only one</p> <p>7 draft because I corrected this by hand.</p> <p>8 Q. I see. So, the textual parts of this were</p> <p>9 provided by Mr. Monaghan?</p> <p>10 A. Yes, I believe so.</p> <p>11 Q. I want to talk about this period in which</p> <p>12 you said that you were working at Michlin and</p> <p>13 Company.</p> <p>14 A. Okay.</p> <p>15 Q. I take it you were there, if I have your</p> <p>16 dates correct, from 1978 until '83, is that correct?</p> <p>17 A. Right.</p> <p>18 Q. And did you personally own the copyrights</p> <p>19 in any of the jingles you wrote while you were at</p> <p>20 Michlin?</p> <p>21 A. Actually, I believe I did because the</p> <p>22 contract I had with them, my memory of that, I don't</p> <p>23 have that contract here but Spencer Michlin always</p> <p>24 said a writer owns his music and I would never take</p> <p>25 that from you.</p>	<p>1 and/or writers.</p> <p>2 Q. Which?</p> <p>3 A. You're asking me to go back 25 years here.</p> <p>4 Q. I know but that's what we've been doing all</p> <p>5 day so I have my time too.</p> <p>6 A. I think I know where you're going and I'm</p> <p>7 not sure I can answer the question. Do you want to</p> <p>8 just ask me the question, did Michlin and Company own</p> <p>9 the copyright or did I own the copyright?</p> <p>10 Q. Did the standard agreement between Michlin</p> <p>11 and the advertisers, you said -- I thought you</p> <p>12 testified that the standard agreement retained the</p> <p>13 copyright and I'm asking you was it for Michlin?</p> <p>14 A. The exact wording of it, I don't remember.</p> <p>15 Q. I don't care about the exact wording. Was</p> <p>16 the import of it that Michlin retained the</p> <p>17 copyrights?</p> <p>18 A. Probably.</p> <p>19 (SHORT BREAK)</p> <p>20 Q. Dr. Kinder, you said you believed you own</p> <p>21 the copyright and some of the music that you wrote</p> <p>22 while you were at Michlin and Company. Is that</p> <p>23 correct?</p> <p>24 A. Now I'm thinking about it, I think that</p> <p>25 Michlin and Company owned the publisher's share and</p>

<p style="text-align: right;">125</p> <p>1 what he always reserved for us was the writer's 2 share. That's... I'm pretty sure that was accurate. 3 Q. Do you mean the writer's share of the 4 performance rights? 5 A. Yeah, any writer's share of anything of the 6 composition, that he had a publishing company -- it's 7 coming back to me now. So the publisher's share went 8 into Michlin Company's publishing company and I 9 forget the name of that and the writer's share was 10 retained by the writer. 11 Q. And do you know who owned the copyright in 12 that music? 13 A. Well, it depended on how the negotiation 14 went with the client. Most of the time, the client 15 didn't care about the copyright so they allowed it to 16 be owned by Michlin's publishing company. 17 Occasionally, that was a negotiating position. 18 Q. So, it was Michlin's publishing company 19 that authorized the licensing for that music, is that 20 correct? 21 A. Right. But there was very little of that 22 done at the time. 23 Q. Did you write any of the music or did you 24 write any jingles for which Hasbro was the client 25 while you were at Michlin and Company?</p>	<p style="text-align: right;">127</p> <p>1 Q. Visionaries? 2 A. Anne wrote that. 3 Q. I'm just doing what you did while you were 4 at Michlin for the moment. 5 A. There were so many. I'm sorry, I tend to 6 remember the biggest ones. 7 Q. Do you understand the term work for hire, 8 as that's used in connection with copyrights? 9 A. I don't understand it from a lawyer's point 10 of view. 11 Q. What is your understanding from a writer's 12 point of view? 13 A. That I mean hired by -- somebody 14 representing another company to write a work for that 15 company and they are going to provide some fee for 16 it. 17 I realize that it's unclear to me other 18 than it's a relationship where they are hiring me to 19 specifically give them a product. 20 Q. Do you understand work for hire to include 21 the work done by an employee for his employer? 22 A. I think so. 23 Q. I'd like to go back again to the settlement 24 agreement between you and Ms. Bryant in this case 25 which is defendant's -- you have the document in</p>
<p style="text-align: right;">126</p> <p>1 A. Yes. 2 Q. Which? 3 A. GI Joe, actually many GI Joes, My Little 4 Pony, My Pretty Pony. Gosh, those are a few of them. 5 Q. Well, Inhumanoids? 6 A. Yes. 7 Q. Visionaries? 8 A. No, I think Anne wrote that. 9 Q. I'm talking about when you were at Michlin 10 and Company? 11 A. Okay. It's a little hard for me to 12 remember that -- 13 Q. If you don't remember, I'd rather you tell 14 me that. Let's go back. My Little Pony? 15 A. Okay, Michlin and Company. I wrote that at 16 Michlin and Company. 17 Q. GI Joe? 18 A. I wrote that at Michlin and Company. You 19 said Inhumanoids. 20 Q. And you thought Miss Bryant did that? 21 A. Inhumanoids I did and I think that was 22 Kinder and Bryant. 23 Q. And so you did that -- 24 A. My Little Pony was Michlin and Company and 25 I wrote that.</p>	<p style="text-align: right;">128</p> <p>1 front of you? 2 A. Yes. 3 Q. All right. 4 A. Is this the right one? It says 784. 5 Q. That's correct. Would you turn to the last 6 page where the signatures are? It's actually page 7 six but there's no six on that page, at least not on 8 my copy. 9 A. Page six? 10 Q. Yes. 11 A. The signature says page seven on mine. We 12 must be on different agreements. 13 Q. Hold on. I'm using a copy that you now 14 have, at least I think I am. No. I beg your pardon. 15 MR. MONAGHAN: That's it. 16 MS. PHARES: It's a different document. 17 MS. SAFFER: They are two different 18 documents! 19 MS. PHARES: One of these documents, the one 20 that's an exhibit in the trial is the one that 21 you produced with your production numbers and 22 it's not on your -- it's not on the stationery 23 of -- this document has -- let's see if we have 24 the same paragraphs. No. 25 MR. MONAGHAN: The text is the same.</p>

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<p>1 MS. SAFFER: They have different numbering 2 of paragraphs and things. I don't know in which 3 way they're different. 4 MR. MONAGHAN: Let me see. Excuse me one 5 second. This isn't signed by Anne. 6 MS. PHARES: I see that. 7 MS. SAFFER: It's more than that. 8 MR. PHARES: But it is the document that she 9 identified at trial. 10 MR. MONAGHAN: It's obviously the wrong one. 11 You have this, too, that's the marked exhibit 12 here. 13 MS. PHARES: I don't frankly -- whether it's 14 marked here or not is not what makes it the 15 final document or not. 16 MS. BRYANT: I know the answer to it. 17 MR. MONAGHAN: Tell me outside. Do you have 18 a copy that I can -- 19 MS. SAFFER: Yes, sure. 20 MS. PHARES: Bring it back. 21 Q. Sorry. 22 A. It's okay. 23 (SHORT BREAK) 24 MR. MONAGHAN: I see there's a missing page 25 four. We're missing page four.</p>	<p>1 copy I have has the signature. 2 MS. PHARES: Are you suggesting that your 3 document, if it had its missing page, would be 4 any different than the one that's at trial, the 5 one -- 6 MR. MONAGHAN: No, I'm not. 7 MS. PHARES: So they are essentially the 8 same document except yours happens to have 9 Miss Bryant's signature? 10 MR. MONAGHAN: Yeah, there's something a 11 little funny about the way the signature page 12 is. 13 MS. PHARES: It was faxed to you, you said. 14 MR. MONAGHAN: No. It looks like there's a 15 cut and paste or something. I don't know. 16 There's a handwritten -- paragraph seven has 17 some handwriting on it. 18 MS. PHARES: Without costs or attorneys 19 fees, correct? 20 MR. MONAGHAN: Yeah, with initials. 21 Q. Do you know whose initials those are, Mr. 22 -- 23 A. That's me. 24 MR. MONAGHAN: I think what happened was we 25 were not all present. I'm not suggesting</p>
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<p>1 MS. PHARES: Were you examining the witness 2 about this document? Did you put this in 3 earlier? 4 MR. MONAGHAN: No. 5 MS. SAFFER: I did. 6 MS. PHARES: We're going to substitute the 7 one that you were looking at. I'm going to give 8 you a good copy. I'm going to give you the copy 9 that was in evidence of this document so that 10 we're all working off of the same document and 11 we're talking about the defendant's exhibit in 12 evidence at trial, Defendant's Exhibit-F. 13 MR. MONAGHAN: But there may be an error 14 because that one does not bear Miss Bryant's 15 signature. 16 MS. PHARES: Miss Bryant identified it as 17 her settlement agreement at trial. That's all 18 I'm telling you. 19 MR. MONAGHAN: I know and I don't think 20 you're trying to make anything more of that than 21 that but it appears there's a missing page. 22 MS. PHARES: But not in the one that was 23 introduced at trial. 24 MR. MONAGHAN: But there's an important 25 element missing, i.e. a signature and the other</p>	<p>1 anything. These were not executed with 2 everybody present at the same time and we may 3 have sought and obtained Dr. Kinder's signature 4 by fax, but I'd have to go back and look. We'll 5 straighten it out. 6 Q. For purposes of my questions, as far as 7 you're concerned, Mr. Kinder or Dr. Kinder -- 8 A. Either one, I'm still Mr. Kinder. 9 Q. You did indeed enter into a settlement 10 agreement with Miss Bryant, did you? 11 A. Yes, I did. 12 Q. So far as you know, the settlement 13 agreement you entered into with Miss Bryant, she 14 signed? 15 A. Yes. I believe I have a signed copy. 16 Q. And if you would turn to the signature page 17 of the document that's before you, you'll notice that 18 you signed on the line that says Ford Kinder, is that 19 correct? 20 A. Right. 21 Q. Also for Kinder and Company, right? 22 A. Right. 23 Q. And for Vadivox Limited? 24 A. Right. 25 Q. Under paragraph six of this agreement which</p>

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1 begins on page five, is it correct that the Kinder
2 defendants agree to use their best efforts and to
3 cooperate to provide information including
4 documentation on request of plaintiff or her counsel
5 with respect to the pursuit of plaintiff's claims
6 against parties other than the Kinder defendants, is
7 that correct?

8 A. Yes.

9 Q. And it goes on. And am I correct that in
10 the last sentence, it says that "such cooperation
11 shall include but not be limited to meetings,
12 telephone conferences and file review should such be
13 deemed necessary", is that correct?

14 A. Exactly.

15 Q. And is it also true that the release of the
16 claims, I'm looking at paragraph eight by the way,
17 that the release of the claims that the parties
18 exchange are being held pending your compliance with
19 the condition that you cooperate?

20 Or let me ask a background question. Did
21 you also sign releases with Ms. Bryant as part of
22 your settlement, do you remember?

23 A. I don't remember.

24 Q. This document says that contemporaneously
25 with the agreement, you're executing and delivering a

1 Q. And anyway, now he's representing you, is
2 that correct?

3 A. True.

4 Q. And did Ms. Bryant ever ask you for copies
5 of the agreements between Kinder and Bryant and
6 Sunbow?

7 A. No.

8 Q. Never?

9 A. Between Kinder and Bryant and Sunbow? You
10 did.

11 Q. Right.

12 A. I think probably, yeah, they probably did.

13 Q. I didn't ask you if they probably did. Do
14 you remember whether they did?

15 A. I don't remember.

16 Q. Do you remember actually separately did Mr.
17 Monaghan ever ask you?

18 A. I don't think he did.

19 Q. Did either one of them ask you for copies
20 of the agreements between Kinder and Bryant and GBI?

21 A. It was sort of a -- it's more than a yes or
22 no. I'm sorry. It was like a one time question, do
23 you have any of the old contracts because they're
24 having trouble finding them and my answer was I don't
25 have any of the old contracts.

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1 general release?

2 A. So we probably did.

3 Q. And this document also says that "the
4 releases shall be held in escrow by plaintiff's
5 counsel pending satisfaction of the conditions herein
6 by the Kinder defendants."

7 Do you know what an escrow means?

8 A. Just that it's held in a safe place until
9 the terms are executed and satisfied.

10 Q. Do you know whether or not -- and the
11 plaintiff's counsel here is Mr. Monaghan, is that
12 correct?

13 A. Right.

14 Q. Do you know if Mr. Monaghan is still
15 holding your release?

16 A. I don't.

17 Q. Do you know whether you ever received it?

18 A. I don't remember.

19 Q. So, when you met last night with

20 Mr. Monaghan, you were meeting with him both pursuant
21 to this agreement and your obligations to cooperate,
22 is that correct?

23 A. It's not because of this agreement. I would
24 have met with him anyway whether it was in this
25 contract or not.

1 Q. Who asked you that?

2 A. Anne, I think.

3 Q. When did she ask you that?

4 A. Early, before any settlement.

5 Q. So before 2001, she was asking you if you
6 had any of the old written agreements, is that
7 correct?

8 A. Oh, this is so difficult. I believe so. Did
9 we -- I can't ask.

10 Q. It's not a yes or no as you say?

11 A. Everyone was trying to find the documents
12 and someone, both sides asked me if I had any and I
13 didn't.

14 Q. Now you said earlier today and just to
15 reorient ourselves that as between you and Ms. Bryant
16 once you had formed Kinder and Bryant, that you
17 probably had more of the laboring noir, shall we say,
18 with respect to negotiating agreements, is that
19 correct?

20 A. Yes.

21 Q. And did you -- was that true both with
22 respect to your making agreements with Kinder and
23 Bryant and as well as making agreements with Sunbow
24 -- I beg your pardon, let me strike that and start
25 over.

<p style="text-align: right;">137</p> <p>1 Were you also sort of handling or basically 2 responsible for the negotiations on behalf of Kinder- 3 and Bryant when dealing with GBI as well as with 4 Sunbow? 5 A. It's an overstatement. Anne and I discussed 6 almost everything. I sort of took the position of 7 being the spokesperson but if there was anything to 8 be discussed, we always talked it over. It wasn't 9 routine, you know, there's a lot of routine business 10 that gets done, I took care of that. There was 11 negotiations going on, I didn't negotiate contracts 12 and not talk to Anne. We had a very close 13 relationship and we talked all the time. We didn't 14 make decisions independently. 15 Q. And the business that Sunbow was in was 16 producing animated children's programs, is that 17 correct? 18 A. And movies. 19 Q. And movies. 20 A. Television programs and movies. 21 Q. What sort of work was Sunbow commissioning 22 Kinder and Bryant to do? 23 A. Well, they commissioned us to do theme 24 songs for cartoon shows and songs, television show 25 songs.</p>	<p style="text-align: right;">139</p> <p>1 success, it means it's going to have other uses. 2 Q. I'm only asking that one question. We'll 3 go on from there, but I get to decide how we are 4 going to go on from there. 5 A. Okay. 6 Q. When you negotiated with Sunbow, did 7 anybody represent you, did a lawyer represent you? 8 A. No. 9 Q. And did you negotiate with terms with 10 someone at Sunbow? 11 A. What do you mean with terms? 12 Q. The terms of your contract? 13 A. Yeah, yes. 14 Q. Who did you negotiate the terms of your 15 contract with? 16 A. I think Suzette Bouchett, Carol Weitzman, I 17 think that was mostly it. Sometimes Joe would be 18 involved. 19 Q. Was Tom Griffin ever involved? 20 A. No, not that I recall. 21 Q. What was the process, was there a form 22 agreement and then you said, well, we like this 23 provision or we don't like some other provision and 24 then you'd negotiate the provisions that way? 25 A. Yes.</p>
<p style="text-align: right;">138</p> <p>1 Q. And in both cases, these were -- this was 2 music that was to be part of the sound track of the 3 TV cartoon or the movie, is that correct? 4 A. Not solely. The theme songs were generally 5 part of it but there were other uses. They would take 6 a theme song and put it in a -- not a video game but 7 -- 8 Q. I'm talking about when you first worked 9 with them in the 80s? 10 A. Right. 11 Q. When you wrote the music initially for them 12 for Sunbow, I'm not talking about any later 13 exploitation of music, I'm just talking about the 14 agreement between Kinder and Bryant and Sunbow. 15 MR. MONAGHAN: I don't understand the 16 question. 17 MS. PHARES: I haven't finished the 18 question. How about that? 19 A. I'll understand it better too. 20 Q. What was the -- you were writing music for 21 a particular TV series or a TV program or a cartoon 22 program, is that correct? 23 A. It's correct, but I think it's important to 24 note that a lot of these shows were number one so we 25 were used to having success. Generally, if there's</p>	<p style="text-align: right;">140</p> <p>1 Q. And were they often changed? 2 A. They were occasionally changed. 3 Q. So that when you say occasionally meaning 4 basically, there was a form agreement and sometimes 5 you were able to negotiate some changes? 6 A. Yes. 7 Q. Did William Dobishinski ever represent you? 8 A. No. 9 Q. Ever represented Kinder and Bryant? 10 A. I don't know what the word -- we never 11 paid him to represent us. He was somebody who said I 12 can be an intermediary between the two places. I 13 always figured he worked for Sunbow because there's 14 were the bulk of the money was. 15 We had an agreement that he would 16 administer the money but -- 17 Q. Who had an agreement that he would 18 administer the money? 19 A. We signed an agreement with TAMAD, his 20 company, that he would administer the money that came 21 out of the writer's share of the royalties. 22 Q. When you say we, you mean Kinder and 23 Bryant? 24 A. Right. 25 Q. So Kinder and Bryant had an agreement with</p>

<p style="text-align: right;">141</p> <p>1 TAMAD, Mr. Dobishinski's company?</p> <p>2 A. And we may have individually had agreements</p> <p>3 with him.</p> <p>4 Q. What would the individual agreements have</p> <p>5 been for?</p> <p>6 A. For the same thing.</p> <p>7 Q. The same thing. And he was handling your</p> <p>8 share of the writer's performance royalties, is that</p> <p>9 correct?</p> <p>10 A. The checks actually went to him in</p> <p>11 California. He would deposit them, deduct his</p> <p>12 percentage, split the money and send Anne and me</p> <p>13 checks.</p> <p>14 Q. What checks are you talking about, checks</p> <p>15 from whom?</p> <p>16 A. Royalty checks from BMI or ASCAP.</p> <p>17 Q. So you're talking about the performance</p> <p>18 royalty money, is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember ever discussing with Bill</p> <p>21 Dobishinski the terms of any of the agreements with</p> <p>22 Sunbow?</p> <p>23 A. Yes, I remember one time. I remember it</p> <p>24 just went back and forth a long time. Mostly it was</p> <p>25 Bill just coming and saying here's what you should</p>	<p style="text-align: right;">143</p> <p>1 discussion of the terms of the agreements with</p> <p>2 Sunbow?</p> <p>3 A. Probably.</p> <p>4 Q. Do you remember?</p> <p>5 A. At least with me, not necessarily with</p> <p>6 Bill.</p> <p>7 Q. She talked to you?</p> <p>8 A. I mean I would always discuss -- we</p> <p>9 discussed everything.</p> <p>10 Q. And so she was completely familiar with</p> <p>11 what was going on with anything that you did on</p> <p>12 behalf of Kinder and Bryant?</p> <p>13 A. Completely familiar, neither of us were</p> <p>14 legal people, we were musicians. There were a lot of</p> <p>15 contracts involved. We had a good relationship with</p> <p>16 Sunbow, with Griffin Bacal, a trusting relationship.</p> <p>17 Completely familiar with that stuff, I don't think</p> <p>18 either of us were.</p> <p>19 Q. And was it your role as president of Kinder</p> <p>20 and Bryant to sign all the agreements with Sunbow?</p> <p>21 A. No.</p> <p>22 Q. For the production?</p> <p>23 A. Either of us could sign and Anne was</p> <p>24 chairman, I was president.</p> <p>25 Q. Either one of you could have signed. Did</p>
<p style="text-align: right;">142</p> <p>1 do.</p> <p>2 Q. Mr. Dobishinski was a lawyer, wasn't he?</p> <p>3 A. He was a lawyer.</p> <p>4 Q. When he was telling you what you should do,</p> <p>5 what did you think he was doing?</p> <p>6 A. Telling us what Sunbow would agree to.</p> <p>7 Q. And he was corresponding with Sunbow on</p> <p>8 your behalf?</p> <p>9 A. I think you have to understand the nature</p> <p>10 of the relationship between -- not Dobishinski,</p> <p>11 between Joe Bacal and me. I think that's something</p> <p>12 that's being left out here.</p> <p>13 Q. That's because I'm not asking you about it.</p> <p>14 A. It has a lot to do with how this --</p> <p>15 Q. At the moment, what I'm concerned about is</p> <p>16 the relationship that you had with Mr. Dobishinski?</p> <p>17 A. I never considered him a lawyer.</p> <p>18 Q. I don't mean you. I mean Kinder and</p> <p>19 Bryant.</p> <p>20 A. We never considered him our lawyer because</p> <p>21 he worked for them and I didn't see how he could be</p> <p>22 our lawyer and work for them. It didn't --</p> <p>23 Q. That makes two of us.</p> <p>24 A. Okay.</p> <p>25 Q. Did Miss Bryant participate in the</p>	<p style="text-align: right;">144</p> <p>1 you in fact usually sign for Kinder and Bryant?</p> <p>2 A. I don't think I necessarily signed more</p> <p>3 than Anne did. I might have. It wasn't my role. I</p> <p>4 wasn't the business guy. We were both musicians.</p> <p>5 I just had a little more sense of business</p> <p>6 than Anne did and didn't mind doing it. Anne did</p> <p>7 more arrangements, musical arrangements than I did so</p> <p>8 we sort of split the work that way.</p> <p>9 It wasn't an assigned thing.</p> <p>10 Q. I understand, most relationships, people</p> <p>11 end up taking out the garbage or --</p> <p>12 A. Good analogy.</p> <p>13 Q. Now I'd like to show you what is trial</p> <p>14 Exhibit-M which is the Jem agreement. Tell me when</p> <p>15 you've had a chance to look at it?</p> <p>16 A. I've looked at it. It's long. I've seen it</p> <p>17 before.</p> <p>18 Q. And I'm not going to repeat the testimony</p> <p>19 that you've given in your declaration about the</p> <p>20 signatures on this agreement, but I think we are</p> <p>21 agreed that you signed this agreement?</p> <p>22 A. Yes.</p> <p>23 Q. And I want to first ask you what do you</p> <p>24 understand that the music that you were writing under</p> <p>25 this agreement, what was it for?</p>

<p style="text-align: right;">145</p> <p>1 A. It was for the music videos that were 2 contained within the television show, the Jem Show. 3 Q. Well, originally, we weren't talking about 4 music videos, it was for a television program? 5 A. They were actually little music videos and 6 that's part of why there's a separate agreement here. 7 Q. When you are talking about video, are you 8 talking the material on which they were created? 9 A. No, I'm talking about the final product as 10 we viewed them earlier. Just like MTV, there's a 11 picture that went with the sound. We did the sound 12 first, then they did the picture. It came up with a 13 -- just like on MTV, the name of the song, who was 14 performing it, just like a little video, they were a 15 little bit shorter than regular songs on MTV and that 16 was the concept of the show. It was all based on 17 this music. 18 Q. And the show was what? 19 A. The Jem Show. 20 Q. And the Jem Show was -- what was the theme 21 of the television series? 22 A. It was two female rock bands competing to 23 be the number one rock band in the world. We wrote 24 music videos or songs, performances for both bands. 25 Q. And then those music videos were fitted</p>	<p style="text-align: right;">147</p> <p>1 doesn't he? 2 A. That's right. 3 Q. And on the page ten of the agreement when 4 you signed this, you were signing for Kinder and 5 Bryant, is that correct? 6 A. Yes. 7 Q. And Kinder and Bryant was the contractor, 8 isn't that correct, under this agreement? 9 A. Right. 10 Q. And on page 11 which is the so-called 11 Schedule A, that's also your agreement, isn't it? 12 A. Yes. 13 Q. Do you know what this Schedule A is? 14 A. My understanding of it is that it says that 15 Kinder and Bryant as a corporation can make an 16 agreement on behalf of the services of the writers, 17 Ann Bryant and Ford Kinder. 18 Q. And it also says that you were employees of 19 Kinder and Bryant, doesn't it, that you wrote 20 original music as employees of Kinder and Bryant, 21 line two? 22 A. Yes, it says that. 23 Q. Above your signature, that's Anne's 24 signature, is that correct? 25 A. Yes.</p>
<p style="text-align: right;">146</p> <p>1 into the animated series, is that correct? 2 A. They would fit into the program as 3 independent pieces with the knowledge that they could 4 be taken out and used separately which they were even 5 in the beginning and that's what they were created 6 for. 7 Q. And then they were created as part of that 8 -- they were part of that story of the competing 9 bands, is that correct? 10 A. That's true. 11 Q. And then the songs -- were the songs that 12 the performers or that the bands were performing as 13 part of the competition, is that the idea? 14 A. Exactly. 15 Q. This didn't include the lyrics, did it, 16 that you created? 17 A. The lyrics were written mostly by Barry 18 Harman, although he didn't write them as lyrics. He 19 wrote stanzas and then we would pick a stanza to be 20 like we'd say this would be a good chorus, these 21 would be good verses, maybe I could mix these lines 22 up and it would work better. He still deserves 23 credit for the lyrics although we did manipulate what 24 he gave us. 25 Q. In fact, he gets half of the writer's share</p>	<p style="text-align: right;">148</p> <p>1 Q. And on page 13, that's also your signature, 2 is that correct? 3 A. Yes. 4 Q. And this is on a two-page letter that's 5 labeled an inducement letter, is that correct? 6 A. Right. 7 Q. And do you understand what the inducement 8 letter is? 9 A. To me, yeah, it's us acknowledging that we 10 would work for the contractor which is the company to 11 provide services for this production. 12 Q. And it also says, am I correct, that in 13 paragraph two, you say you're familiar with all the 14 terms of the agreement? 15 A. It says that. 16 Q. And that you will perform and comply with 17 all the terms? 18 A. Yes. 19 Q. And that the representations and warranties 20 of the contractor in the agreement are true? 21 A. It says that. 22 Q. And that it also confirms that there have 23 been granted to the contractor all of the rights 24 granted by the contractor to you under the agreement? 25 A. Yes.</p>

<p>149</p> <p>1 Q. On the signature page next to yours, is 2 that also Miss Bryant's signature?</p> <p>3 A. Yes.</p> <p>4 Q. With the exception of the -- at the 5 beginning of this just to -- the beginning on the 6 first page of this agreement in paragraph two, this 7 sets out payment terms, is that correct?</p> <p>8 A. Production fees.</p> <p>9 Q. Well, let me just be clear. The paragraph 10 begins, "For all the rights granted to the company in 11 the music and for performance by contractor of all 12 the obligations hereunder", and then it proceeds to 13 describe what that is or isn't, "the company shall 14 pay contractor a fee of \$2,200 for each song for 15 which writer writes and delivers the music payable on 16 delivery thereof", is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. It's not just a performance fee, isn't that 19 correct?</p> <p>20 A. Not performance, production.</p> <p>21 Q. It's not just a production fee, this is a 22 payment for all the -- all that goes on in this 23 agreement?</p> <p>24 MR. MONAGHAN: Object to the form.</p> <p>25 A. I don't think that's really accurate.</p>	<p>151</p> <p>1 A. Right.</p> <p>2 Q. Pursuant to which contractor is entitled 3 to the exclusive services of writer and to all the 4 results of the writer's services."</p> <p>5 Is that correct?</p> <p>6 A. Right.</p> <p>7 Q. Then move down another two lines "and that 8 the music is a work made for hire within the meaning 9 of section 101 of the copyright act."</p> <p>10 Then it goes on to say, "upon writing of 11 the music, all right, title and interest therein 12 shall automatically vest in the company", is that 13 correct, "and company shall be the sole and unlimited 14 owner thereof".</p> <p>15 Having looked at that and referring back to 16 section 2A, do you think that 2A, that first line 17 perhaps refers to the transfer of those rights?</p> <p>18 A. I think but I think that there are many 19 other paragraphs that also refer to.</p> <p>20 Q. There are surely other paragraphs and we 21 will come to them.</p> <p>22 You said earlier that -- hang on, just one 23 question. What was the procedure by which you and 24 Anne Bryant signed agreements with Sunbow?</p> <p>25 Did they send them to you signed or did</p>
<p>150</p> <p>1 Q. You don't have any disagreement that this 2 has to do also with the conveyance of rights, do you?</p> <p>3 A. I think we considered this a production fee 4 for writing arrangements, producing the songs which 5 took hours and hours and hours, hiring all the 6 people, booking all the people, sending demos to the 7 agency, there's a lot involved. This was a production 8 fee.</p> <p>9 Q. Tell me what you think the first clause of 10 this, that provision, that section 2A means, "for all 11 rights herein granted to company in the music"?</p> <p>12 A. I think the rights --</p> <p>13 Q. Company is, by the way, under this 14 agreement is Sunbow.</p> <p>15 A. I don't know what rights it is referring to 16 exactly.</p> <p>17 Q. Let me refer you then to section five on 18 page two and this is a section that begins with, 19 "Contractor warrants, acknowledges and agrees that 20 the music to be written by writer and delivered by 21 contractor is to be written by writer under and 22 pursuant to an employment agreement between 23 contractor and writer".</p> <p>24 That's the employment agreement that we 25 looked at a little earlier?</p>	<p>152</p> <p>1 they send them to you and you signed them and they 2 were sent back?</p> <p>3 A. They sent it to us unsigned -- I don't 4 really -- we never met.</p> <p>5 Q. It was done through the mail or something?</p> <p>6 A. Yeah, I think sometimes they were unsigned 7 and sometimes they were signed. I would say more 8 often than not they were unsigned.</p> <p>9 Q. And then you were paid as the -- according 10 to this agreement, as the music was delivered? How 11 were you paid?</p> <p>12 A. Yes, after we delivered the tracks, they 13 would pay us.</p> <p>14 Q. When you -- by the time you delivered the 15 tracks, had you already signed the agreements?</p> <p>16 A. No.</p> <p>17 Q. Not always?</p> <p>18 A. Most of the time, I'd say no.</p> <p>19 Q. How many of these agreements can you 20 remember signing?</p> <p>21 A. Many, many, many.</p> <p>22 Q. You remember signing many?</p> <p>23 A. We signed a lot of agreements.</p> <p>24 Q. I'm talking just with Sunbow?</p> <p>25 A. We signed a lot of agreements with Sunbow</p>

<p style="text-align: right;">153</p> <p>1 as well. They weren't real efficient but the tracks 2 had to be there so we produced the music and the 3 paperwork got done as efficiently as they could do 4 it. They also usually took four months to pay us. 5 Q. I want to give you also a copy of a 6 document which is already in evidence as Defendant's 7 Exhibit-O. 8 Do you recognize this agreement? 9 A. I vaguely remember it. 10 Q. Is your signature on the second page? 11 A. Yes. 12 Q. Do you know what this agreement does? 13 A. I think what it was an extension -- wait a 14 minute. I'm getting confused. 15 I think this was an addendum to the 16 contract referring to cassettes that were sold as 17 product, separate product with the dolls. 18 Q. These are the dolls that you referred to 19 earlier today, is that correct? 20 A. The Jem dolls. 21 Q. Is that correct? 22 A. Uh huh. I don't know if I've talked about 23 the dolls earlier. 24 Q. You earlier said that you were also -- that 25 there was a separate use in connection with the</p>	<p style="text-align: right;">155</p> <p>1 needed one song which was called How Does My Garden 2 Grow. He said please, please, please, could you 3 write this song really fast and send it over and I 4 said -- whenever he asks for a favor, I said yes. 5 That's why this contract exists. 6 Q. Just to let you know something, is it your 7 signature on page ten? 8 A. Yes. 9 Q. Is it your signature on page 11? 10 A. Yes. 11 Q. And that's also Anne Bryant's signature? 12 A. As far as I know. 13 Q. And on page 13, is that your signature? 14 A. Yes. 15 Q. Does that also appear to you to be Anne 16 Bryant's signature? 17 A. It appears to be. 18 Q. Now, would you put Defendant's Exhibit-N 19 and M next to each other and tell me if these are the 20 same except for the payment provisions, are these 21 basically the same agreements? 22 A. You know, Gloria, I don't think that's fair 23 to me. These documents are 12 pages long. How can I 24 tell you that they are the same. 25 MR. MONAGHAN: They speak for themselves</p>
<p style="text-align: right;">154</p> <p>1 dolls? 2 A. Okay, yes, the same dolls. 3 Q. This is the contractual provision that 4 provided payments to Sunbow for that use, is that 5 correct? 6 A. It was a payment to use them specifically 7 for that one time on the cassettes that were sold to 8 help sell the dolls. They were sold as if you were 9 buying a record. 10 We did some work I believe putting together 11 the masters, I think there were three songs on each 12 cassette. 13 Q. I now want to give you a copy of what's an 14 exhibit in evidence as Defendant's Exhibit-N. Do you 15 recognize it? 16 A. Yeah. 17 Q. What is it? 18 A. This is something I barely looked at, I 19 think. Okay. Yes, My Little Pony and Friends. 20 Q. This is the contract between Kinder and 21 Bryant and Sunbow for My Little Pony and Friends? 22 A. Yes, and this was something we didn't -- 23 this is a job we actually turned down. There's a 24 contract -- the fees were too low on this job so we 25 did not take it. Joe called me as a special favor, he</p>	<p style="text-align: right;">156</p> <p>1 anyway. 2 Q. Okay. Do you know what's -- do you know 3 what provisions these agreements provide to Kinder 4 and Bryant with respect to royalties? 5 A. Which royalties are you referring to? 6 Q. Let's start with the ones, let's look at 7 the Jem agreement and that's Defendant's Exhibit-M. 8 First of all, there are performance 9 royalties which begin in paragraph 5C at the bottom 10 of page two. 11 A. Okay. It gives us our writer's share. 12 Q. And the performance royalties, is that 13 correct? 14 A. Yes. 15 Q. And it also provides how those performance 16 royalties will be divided among the various lyricists 17 and songwriters, is that correct? 18 A. Yes. 19 Q. And then in paragraph six, there is a 20 reference to what are referred to in the agreement, 21 I'm not making this up, as music publishing rights, 22 do you see that? 23 A. Music publishing rights. 24 Q. Correct. Then those are listed on the next 25 page?</p>

<p style="text-align: right;">157</p> <p>1 A. Right.</p> <p>2 Q. And you said earlier today that you weren't</p> <p>3 very familiar with these publishing rights?</p> <p>4 A. I'm familiar with it, but I don't claim to</p> <p>5 be an expert on it or anything.</p> <p>6 Q. This is my question to you, do you know</p> <p>7 whether or not Sunbow has made licenses to third</p> <p>8 parties for commercial phono records? That's a yes</p> <p>9 or a no or I don't know.</p> <p>10 A. I think yes, they have.</p> <p>11 Q. What phono records do you think they have</p> <p>12 licensed?</p> <p>13 A. I think this DVD is a phono record.</p> <p>14 Q. Do you know what a phono record is?</p> <p>15 A. I think a phono record, my understanding is</p> <p>16 anything, a record album, a cassette, a DVD, any form</p> <p>17 in which it is a record.</p> <p>18 Q. What's the basis of that understanding?</p> <p>19 A. It's just my understanding. I'm not a</p> <p>20 lawyer, I told you that.</p> <p>21 Q. Has Anne Bryant told you that's what it</p> <p>22 is?</p> <p>23 A. No.</p> <p>24 Q. That's just what your understanding is?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">159</p> <p>1 A. Yes, it has.</p> <p>2 Q. I should say that in this agreement, other</p> <p>3 uses is defined on the next page and it's a little</p> <p>4 hard to refer you to it but about midway down the</p> <p>5 page almost in the middle of the page is a sentence</p> <p>6 beginning "in the event that"?</p> <p>7 A. Right.</p> <p>8 Q. Do you see that "in the event that company</p> <p>9 licenses the music in a form containing music or</p> <p>10 other literary materials written or composed by any</p> <p>11 third-party or parties", do you see that?</p> <p>12 A. Uh huh.</p> <p>13 Q. Do you know whether or not Sunbow has</p> <p>14 licensed the music to be used in a form containing</p> <p>15 music or other literary materials written by third</p> <p>16 parties?</p> <p>17 A. I don't know that they have.</p> <p>18 Q. When you and Ms. Bryant dissolved Kinder</p> <p>19 and Bryant, did all the written agreements between</p> <p>20 Sunbow and Kinder and Bryant stay at Kinder and</p> <p>21 Company?</p> <p>22 A. Any pre-existing documents were to be</p> <p>23 continued to be split between us as --</p> <p>24 Q. I mean were the physical documents, did</p> <p>25 they remain at Kinder and Bryant -- I mean at Kinder</p>
<p style="text-align: right;">158</p> <p>1 Q. Do you know whether or not phono record is</p> <p>2 a technical term in the copyright act?</p> <p>3 A. Probably is.</p> <p>4 Q. I'm only asking you whether you know or</p> <p>5 not?</p> <p>6 A. No, I don't.</p> <p>7 Q. Do you know what a synchronization right</p> <p>8 is?</p> <p>9 A. I don't.</p> <p>10 Q. Do you know whether or not Sunbow has</p> <p>11 authorized the synchronization of the songs that were</p> <p>12 produced in a theatrical motion picture?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you know whether or not Sunbow has</p> <p>15 authorized the creation of piano copies?</p> <p>16 A. I don't know.</p> <p>17 Q. Do you know whether or not it has</p> <p>18 authorized the creation of orchestrations?</p> <p>19 A. No, I don't know.</p> <p>20 Q. Do you know whether it's authorized the</p> <p>21 creation of any songbook, folio or similar</p> <p>22 publication?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know whether or not it has</p> <p>25 authorized any other uses of the music?</p>	<p style="text-align: right;">160</p> <p>1 and Company?</p> <p>2 A. Yes.</p> <p>3 Q. When you sold Kinder and Company, were they</p> <p>4 still there?</p> <p>5 A. I don't know.</p> <p>6 Q. Did you ever make copies of those</p> <p>7 agreements for Ms. Bryant?</p> <p>8 A. No.</p> <p>9 Q. Did she ever ask for them?</p> <p>10 A. Originally as I stated earlier, you and she</p> <p>11 asked me and I didn't have any copies.</p> <p>12 Q. But at the time of the dissolution, did she</p> <p>13 ask you for any copies?</p> <p>14 A. No.</p> <p>15 (SHORT BREAK)</p> <p>16 Q. Dr. Kinder, I'm going to hand you what's</p> <p>17 already in evidence at trial as Defendant's</p> <p>18 Exhibit-H. I know that you are familiar with this</p> <p>19 because you said you reviewed it with Mr. Monaghan</p> <p>20 last night, is that correct?</p> <p>21 A. I didn't look at it this closely. Okay. I</p> <p>22 have never really seen this.</p> <p>23 Q. You were copied on this letter, weren't</p> <p>24 you?</p> <p>25 A. I don't remember it.</p>

<p style="text-align: right;">161</p> <p>1 Q. Were you copied? You are copied on the 2 letter?</p> <p>3 A. I just don't remember it.</p> <p>4 Q. Do you recognize the signature?</p> <p>5 A. No. I don't remember what his signature 6 looked like.</p> <p>7 Q. This is a letter to Robert Harris, is that 8 correct, from Mr. Dobishinski?</p> <p>9 A. Right.</p> <p>10 Q. And the re line says what?</p> <p>11 A. The what?</p> <p>12 Q. The re line underneath Harris's address?</p> <p>13 A. "Jem" (Kinder and Bryant) and (2) 'My 14 Little Pony' (Kinder and Bryant, Rick Brenckman).</p> <p>15 Q. Do you know who Rick Brenckman is?</p> <p>16 A. Yes.</p> <p>17 Q. Who is he?</p> <p>18 A. He is another music writer in New York and 19 I guess he worked on the My Little Pony show.</p> <p>20 Q. You guess he did or do you know?</p> <p>21 A. I don't know for sure, I think he did.</p> <p>22 Q. And at the beginning of this letter or this 23 letter appears to be a negotiation that Mr. 24 Dobishinski is carrying on with Mr. Harris about 25 these two agreements, isn't it, Jem and My Little</p>	<p style="text-align: right;">163</p> <p>1 Q. Well, when he was administering publishing 2 royalties; that had to do with performance royalties, 3 correct?</p> <p>4 A. I don't know the difference.</p> <p>5 Q. You earlier told me, I'm just going back to 6 what you had testified, am I correct that you said 7 that you had -- you, Kinder and Bryant, had an 8 agreement with Mr. Dobishinski that he received your 9 performance royalties, took a cut and sent the two 10 checks to you and to Anne Bryant, correct?</p> <p>11 A. It wouldn't have only been performance 12 royalties. If there were more royalties, he would 13 have received those too.</p> <p>14 Q. You're saying whatever royalties you were 15 entitled to, Mr. Dobishinski negotiated for you?</p> <p>16 A. I think so, yes.</p> <p>17 Q. And he negotiated those on your behalf, is 18 that correct?</p> <p>19 A. He did.</p> <p>20 Q. I assume you don't recognize any of the 21 other handwriting on this agreement, is that correct?</p> <p>22 A. No, I don't.</p> <p>23 Q. So, Mr. Dobishinski was being paid for the 24 work that he was doing here out of the commissions he 25 received on whatever you were paid, is that correct?</p>
<p style="text-align: right;">162</p> <p>1 Pony?</p> <p>2 A. Appears to be.</p> <p>3 Q. And he says that "I've discussed the above 4 mentioned agreements with my clients", is that 5 correct?</p> <p>6 A. It says that.</p> <p>7 Q. But you don't think you were 8 Mr. Dobishinski's client?</p> <p>9 A. With him as an administrator, yes.</p> <p>10 Q. I didn't ask you that.</p> <p>11 A. You mean as a lawyer, no.</p> <p>12 Q. He did not have authority to negotiate the 13 license -- the Jem agreement on your behalf with 14 Sunbow, is that what you're saying?</p> <p>15 A. Yes, but he had that authority from Sunbow.</p> <p>16 Q. Wait a minute. He was representing you?</p> <p>17 MR. MONAGHAN: He just said no, he wasn't as 18 a lawyer.</p> <p>19 A. He wasn't representing me as a lawyer.</p> <p>20 Q. So when he wrote this letter to Sunbow 21 asking for concessions for the agreement for you for 22 Kinder and Bryant, that is, he was not representing 23 Kinder and Bryant?</p> <p>24 A. No, he was representing us as an 25 administrator for the publishing royalties.</p>	<p style="text-align: right;">164</p> <p>1 A. Exactly.</p> <p>2 Q. And if you look at the agreement, if you 3 look down at the paragraph beginning A, do you see 4 that, Dr. Kinder?</p> <p>5 A. A?</p> <p>6 Q. Right.</p> <p>7 A. Yes.</p> <p>8 Q. It says, "Jem", and again he repeats 9 "Kinder and Bryant" and then "My Little Pony" and in 10 parenthesis "(Kinder and Bryant and Rick Brenckman)", 11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then in paragraph one, he refers to 14 paragraph 5C, is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. And do you understand that 5C refers to the 17 paragraphs of those agreements?</p> <p>18 A. It appears to, yes.</p> <p>19 Q. And on the next page in paragraph two where 20 it says, "Paragraph 5(c), fifth, last line", those 21 also appear to be referring to the same paragraph, 22 same lines?</p> <p>23 A. I'm sorry, where was it?</p> <p>24 Q. The very top of the page, paragraph 5(c).</p> <p>25 A. Yes.</p>

<p style="text-align: right;">165</p> <p>1 Q. And then the letter continues and refers to 2 paragraph 6A then to paragraph ten, is that correct? 3 A. Yes. 4 Q. And -- 5 MR. MONAGHAN: Let me put an objection on 6 the record. The reference line does say what it 7 says -- 8 MS. PHARES: Are you putting an objection on 9 the record or are you going to read the 10 agreement? 11 MR. MONAGHAN: I'm going to give a context 12 to the objection. The reference line does refer 13 to Jem and My Little Pony but it doesn't tell us 14 which specific agreement by date we're talking 15 about and I don't think the witness has 16 knowledge, you obviously can ask him and you 17 are, as to which particular iteration or 18 compositions, whether we're talking shows, theme 19 or whatever are being referred to in this March 20 3, 1986 letter. 21 Q. Did you sign more than one Jem agreement? 22 A. I think we signed -- there may have been 23 more than one, yes. 24 Q. We've looked at one Jem agreement which you 25 had before you, correct, and there was one amendment</p>	<p style="text-align: right;">167</p> <p>1 that correct, My Little Pony and My Little Pony and 2 Friends? 3 A. I don't think so. Maybe there was, I don't 4 remember. 5 Q. Let me just finish. At the end of the 6 letter, would you please read what's written under 7 paragraph capital D? 8 A. You want me to read that? 9 Q. Yes, please. 10 A. "Please advise us regarding the desired 11 dates to be inserted in the agreements." 12 Q. Okay. If you would refer back to the Jem 13 agreement and what is the date that's written under 14 it? 15 A. 6-1-85. 16 Q. What is the date of the Jem agreement? I'm 17 handing you now Defendant's Exhibit-M at trial. 18 A. It says 6-1-198-- something with a 19 handwritten five in it. 20 MR. MONAGHAN: Now I'd like to get my 21 objection on the record. To the extent that 22 there is a suggestion that because there's a 23 letter here that uses the term my clients, when 24 the testimony has already been given in the 25 record by this witness that Dobishinski was not</p>
<p style="text-align: right;">166</p> <p>1 to the Jem agreement, correct? 2 A. We've seen an amendment, yes. 3 Q. And you said earlier, am I correct, that 4 basically, you were always working off the form 5 agreement from Sunbow, is that correct? 6 A. Not for that. 7 Q. Not for what? 8 A. Not for the Jem agreement. 9 Q. Not for the Jem agreement. So you think 10 the Jem agreement is different from the other 11 agreements? 12 A. It's different from some of the other 13 agreements, yes. 14 Q. But we could tell that by looking at them 15 just by comparing them, couldn't we? 16 A. Exactly. 17 Q. But now to get back to what I'm talking 18 about, in that first section, this letter is 19 referring to Jem and My Little Pony as having the 20 same paragraph, the same provisions in each of the 21 paragraphs as mentioned, is that correct? 22 A. It appears to say that, but I'm not sure 23 what he means by My Little Pony. The television show 24 wasn't called My Little Pony. 25 Q. There are two different programs, isn't</p>	<p style="text-align: right;">168</p> <p>1 his lawyer or Anne's lawyer or Kinder and 2 Bryant's lawyer and there is testimony of record 3 by Carol Weitzman that Dobishinski was selected 4 by Sunbow, hired by Sunbow and you and I know 5 the law very well on that record, you can't 6 represent both sides as a lawyer, so any 7 suggestion that somehow any action on the part 8 of Dobishinski would in any way, shape or form 9 bind my client, the plaintiff in this action, is 10 rejected. 11 It's unethical for him to have represented 12 both sides in a transaction. Anything he did 13 would be suspect and that's it. 14 Q. Dr. Kinder, are you taking the position 15 that if Mr. Dobishinski negotiated something in your 16 favor, you're rejecting it? 17 MR. MONAGHAN: You can't ask him that 18 question. 19 MS. PHARES: I can ask him whatever I want 20 to ask him. 21 MR. MONAGHAN: That's objectionable. We 22 don't need a hypothetical here. 23 Q. I'm just asking you -- 24 A. First of all, I didn't see him as 25 negotiating for us. I saw him as representing Sunbow</p>

<p style="text-align: right;">169</p> <p>1 and presenting us with options.</p> <p>2 Q. And he was presenting you with -- he was</p> <p>3 presenting these options to Sunbow, was he not?</p> <p>4 A. Right.</p> <p>5 Q. He was --</p> <p>6 A. Because he had a separate position, he was</p> <p>7 an administrator in Hollywood.</p> <p>8 Q. And then he was also representing you, is</p> <p>9 that correct?</p> <p>10 A. He was presenting us with contracts.</p> <p>11 Q. And he was representing -- he was</p> <p>12 presenting them to Sunbow?</p> <p>13 A. Just like Carol Weitzman presented me with</p> <p>14 contracts, so did Bill Dobishinski.</p> <p>15 Q. And Dobishinski was representing whom?</p> <p>16 A. Sunbow.</p> <p>17 Q. When he -- he was writing to Sunbow?</p> <p>18 A. I can't say why he wrote the letter the way</p> <p>19 he wrote it. I'm me, he's him. I don't know why he</p> <p>20 wrote, phrased it that way.</p> <p>21 Q. Hey, I just then refer you to again, let's</p> <p>22 look back at Defendant's Exhibit-S which is already</p> <p>23 -- it's a document that Miss Saffer asked to you look</p> <p>24 at and, therefore, should already be in that pile.</p> <p>25 This is -- the document we're looking at is</p>	<p style="text-align: right;">171</p> <p>1 proposal, this is the amendment to the Jem agreement</p> <p>2 that we looked at earlier which was the -- you got</p> <p>3 the last two pages?</p> <p>4 A. Of this?</p> <p>5 Q. Yes. This is the amendment having to do</p> <p>6 with the dolls for the Jem agreement?</p> <p>7 A. This looks like the thing we saw before.</p> <p>8 Q. Right, that's exactly right.</p> <p>9 A. Right.</p> <p>10 Q. And the two pages before that is what's</p> <p>11 known as a red line which shows changes from a prior</p> <p>12 draft and the cover letter is from Bill Dobishinski</p> <p>13 to Carol Weitzman?</p> <p>14 A. Okay.</p> <p>15 Q. And this is an amendment that Mr.</p> <p>16 Dobishinski is submitting to Sunbow on the Jem</p> <p>17 agreement?</p> <p>18 MR. MONAGHAN: Is this in evidence?</p> <p>19 MS. PHARES: Yes.</p> <p>20 MR. MONAGHAN: How did it get into evidence?</p> <p>21 MS. PHARES: On cross.</p> <p>22 Q. On behalf of the -- on behalf of Kinder and</p> <p>23 Bryant, is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. And this was eventually signed, was it not?</p>
<p style="text-align: right;">170</p> <p>1 your dissolution agreement between Kinder and Bryant</p> <p>2 -- well, the dissolution between Anne Bryant and</p> <p>3 Ford Kinder and your company, Kinder and Bryant. I</p> <p>4 want to refer you to paragraph 4A, if you would?</p> <p>5 A. Okay.</p> <p>6 Q. And what does that provision provide?</p> <p>7 A. It provides what I've stated before, that</p> <p>8 the public performance royalties from BMI would be</p> <p>9 paid to TAMAD, Bill Dobishinski's company, and he</p> <p>10 would disburse the money after taking out his fee.</p> <p>11 Q. And it says nothing about publishing</p> <p>12 rights, is that correct?</p> <p>13 A. It doesn't eliminate them either.</p> <p>14 Q. I'm just asking you what it says?</p> <p>15 A. I don't see anything about publishing</p> <p>16 rights.</p> <p>17 Q. Okay. I'd like to now show you a document</p> <p>18 that is Defendant's Exhibit-J in evidence at trial.</p> <p>19 Do you recognize this?</p> <p>20 A. No.</p> <p>21 Q. You're copied on this letter, are you not?</p> <p>22 A. From 20 years ago, yes.</p> <p>23 Q. What this appears to be and what it says is</p> <p>24 this is an agreement -- I think if you look at the</p> <p>25 very last two pages, you'll see that this is a</p>	<p style="text-align: right;">172</p> <p>1 A. I have no idea.</p> <p>2 Q. You can look at Defendant's Exhibit-O. I</p> <p>3 think it's right in the pile that you've just been</p> <p>4 working on.</p> <p>5 A. Which was what eventually signed --</p> <p>6 Q. The last two pages.</p> <p>7 A. We saw a signed copy of this.</p> <p>8 Q. Is that correct? So Mr. Dobishinski handled</p> <p>9 that amendment for Kinder and Bryant on the amendment</p> <p>10 of the Jem agreement, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Have you ever had occasion, Dr. Kinder, to</p> <p>13 see an agreement between Barry Harman and Sunbow?</p> <p>14 A. No.</p> <p>15 Q. Between any lyricist and Sunbow?</p> <p>16 A. No.</p> <p>17 Q. Do you know whether they looked anything</p> <p>18 like the agreements that Kinder and Bryant had with</p> <p>19 Sunbow?</p> <p>20 MR. MONAGHAN: It would be tough to answer</p> <p>21 that since he just said he never had seen them.</p> <p>22 A. I don't know. I assumed they were similar.</p> <p>23 Q. I think this is just the last thing I have.</p> <p>24 If we go back to Kinder-6 which Mr. Monaghan showed</p> <p>25 you this morning, this is the agreement of March 21,</p>

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1 1984 between Kinder and Bryant and GBI, is that

2 correct?

3 A. It appears to be that.

4 Q. Do you have any reason to think it isn't?

5 A. Yes, because the second page is the wrong
6 page.

7 Q. Do you remember this morning, you also
8 testified that the agreements you did between Michlin
9 and Company and GBI were essentially the same as the
10 agreements between Kinder and Bryant and GBI?

11 A. They were similar but they weren't the
12 same.

13 Q. They weren't the same?

14 A. They wouldn't have Spencer Michlin.

15 Q. I didn't ask you that. Just for the
16 moment, forget your answer and listen to my question.

17 A. Okay.

18 Q. Were the basic form agreements between
19 Michlin and Company and GBI similar to the basic form
20 agreements between Kinder and Bryant and GBI?

21 A. Yes, they were similar.

22 Q. And to the extent that you could recall,
23 how were they different?

24 A. I don't recall.

25 Q. Would you look at paragraph two of this

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1 agreement, we were always paid for every other use,
2 every commercial, it went on for years. It was
3 common practice.

4 To try to imply that this was the complete
5 payment for everything in the whole universe is just
6 ludicrous because it wasn't the practice, it wasn't
7 the agreement.

8 Q. Well, what does the agreement say?

9 MR. MONAGHAN: Let me object, time out. He
10 said this isn't the agreement, number one, so
11 every time you've asked him a question about the
12 agreement, you're asking a question he's already
13 said does not cover this agreement. He's
14 already said he doesn't believe it's the
15 agreement. He said page two is not a page two
16 that would have been in any agreement with the
17 parties because it has Mr. Michlin's name and
18 the last page is not countersigned.

19 So, I object to the form of any question
20 that assumes in evidence that this is an
21 agreement, a valid agreement between the
22 parties.

23 Q. Do you know what paragraph D -- the
24 paragraph that refers to Michlin and -- that refers
25 to Spencer Michlin, do you know what this paragraph

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1 agreement? This is -- do you understand what
2 paragraph two is?

3 A. You know, before this meeting, I would have
4 said yes, but now I have to say no. I'm much more
5 confused about what this stuff means than I was
6 before I got here.

7 Q. So, when it says that "we", and we in this
8 case is Kinder and Bryant, "sell, assign, transfer
9 and set over to you all material prepared, created,
10 written and delivered by artist and/or us hereunder
11 and all copyrights and all other rights therein in
12 perpetuity throughout the universe."

13 You don't know what that means?

14 A. I think it sounds verbose and ostentatious
15 to be quite honest and to me, it says we're selling
16 them a product but we never gave up our writer's
17 share and that's my understanding of this.

18 Q. When you refer to writer's share, you're
19 referring to the writer's share of the performance
20 royalties?

21 A. And the other thing which no one has asked,
22 as you've seen, every other media that these songs
23 were put into, we were paid again. It was always
24 understood and I don't know where it states it in
25 there, I'm not a lawyer, that this was not a complete

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1 refers to, what the subject of this paragraph is?

2 A. It seems to refer to more than one thing.
3 So, okay, it says it will be available to create new
4 versions of the composition and then it says that
5 Spencer Michlin will satisfy the document and of
6 course he didn't work for us.

7 Q. Hang on. Am I correct that in the first
8 sentence, it says that if in the event that you, that
9 you're talking to GBI in this thing, in the event
10 that you determine to create any new musical versions
11 of the composition, you agree that subject only to
12 our availability within your required time period for
13 the production of any such musical versions, we shall
14 be entitled to receive upon the completion of all our
15 services, including arrangement and production for
16 any such musical variations as you may require and as
17 for full payment for any such revision, the sum of
18 \$1,000 for each such musical variation produced by
19 you.

20 Do you understand this to relate to the
21 writing of music or to the performing and creation of
22 new variations? Do you see what I mean?

23 A. Those are arrangement fees.

24 Q. Those are arrangement fees?

25 A. It is to pay an arranger to do a new

<p style="text-align: right;">177</p> <p>1 version. It's an arrangement and production fee.</p> <p>2 Q. That's what this clause refers to?</p> <p>3 A. Refers to.</p> <p>4 Q. You said earlier that you didn't really</p> <p>5 know whether you were signing an agreement with GBI</p> <p>6 or with Sunbow, do you remember that, or who was</p> <p>7 hiring you is what you said?</p> <p>8 A. Well, that's not quite what I said. What I</p> <p>9 said was the call would come about a job. It was not</p> <p>10 said this is a Sunbow job or this is a GBI job. It</p> <p>11 said here's the job, it came from the same person,</p> <p>12 Joe Bacal.</p> <p>13 We proceeded on doing whatever it was he</p> <p>14 wanted us to do. The contracts came later.</p> <p>15 Q. But when you signed a contract with GBI,</p> <p>16 you knew you were signing a contract with GBI, right?</p> <p>17 A. Of course.</p> <p>18 Q. When you signed a contract with Sunbow, you</p> <p>19 knew you were signing a contract with Sunbow, right?</p> <p>20 A. Although they overlapped.</p> <p>21 Q. Not the agreements?</p> <p>22 A. Not the agreements, but the product</p> <p>23 overlapped.</p> <p>24 Q. Fair enough.</p> <p>25 A. And so did the companies. It was just</p>	<p style="text-align: right;">179</p> <p>1 A. I would read -- initially I read them and</p> <p>2 then if there were changes, I reviewed the changes.</p> <p>3 I didn't necessarily -- we didn't necessarily read</p> <p>4 every word of every contract.</p> <p>5 Q. And that's because they were basically the</p> <p>6 same except for the changes?</p> <p>7 A. If they appeared to be the same. We had a</p> <p>8 very trusting relationship with them.</p> <p>9 Q. So, the reason I'm asking you this is that</p> <p>10 you said earlier in answer to Miss Saffer that BMI</p> <p>11 should have done something for its writers when it's</p> <p>12 infringing my copyright?</p> <p>13 A. Okay. I used the copyright incorrectly. My</p> <p>14 share of the royalty.</p> <p>15 Q. You didn't intend to suggest that you owned</p> <p>16 the copyright, is that correct?</p> <p>17 A. No.</p> <p>18 Q. And so when you said that they were</p> <p>19 stealing my copyright percentage --</p> <p>20 A. I meant my share of the writer's royalty</p> <p>21 percentage.</p> <p>22 MS. PHARES: That's all, for the moment</p> <p>23 anyway.</p> <p>24 MR. MONAGHAN: How about we take a five</p> <p>25 minute break?</p>
<p style="text-align: right;">178</p> <p>1 incestuous, kind of.</p> <p>2 Q. But it's your understanding, is it not,</p> <p>3 that when you created work for -- when Kinder and</p> <p>4 Bryant created work for GBI, GBI acquired the</p> <p>5 copyright, is that correct?</p> <p>6 A. As I understand it.</p> <p>7 Q. And --</p> <p>8 A. Actually I thought Hasbro acquired the</p> <p>9 copyright.</p> <p>10 Q. And if -- I'm only talking about the</p> <p>11 relationship between you, you, Kinder and Bryant and</p> <p>12 GBI.</p> <p>13 A. Right, I thought -- this first page isn't</p> <p>14 even my memory because I thought it said Hasbro</p> <p>15 retained the copyright.</p> <p>16 Q. But whoever owned the copyright would then</p> <p>17 have a right to exploit or exercise the rights in the</p> <p>18 copyright, is that correct?</p> <p>19 A. Which of course we wanted them to do.</p> <p>20 Q. Your answer to that was yes, is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. I realize it's a long time ago but I'm</p> <p>24 assuming -- I assume that you read all of the</p> <p>25 agreements before you signed them, is that correct?</p>	<p style="text-align: right;">180</p> <p>1 (SHORT BREAK)</p> <p>2 RE-DIRECT EXAMINATION</p> <p>3 BY MR. MONAGHAN:</p> <p>4 Q. Dr. Kinder, you have testified about the</p> <p>5 understandings between Sunbow on the one hand and</p> <p>6 Kinder Bryant on the other and also between GBI on</p> <p>7 the one hand and Kinder Bryant on the other hand.</p> <p>8 What if anything were the substantive</p> <p>9 differences between the two in terms of your</p> <p>10 continued -- you being Kinder Bryant's right to</p> <p>11 continued participation in any royalties?</p> <p>12 A. There was no difference. As you can see in</p> <p>13 our payments, the commercial royalties were paid</p> <p>14 through BMI and ASCAP, television theme songs paid</p> <p>15 through BMI and ASCAP and one was GBI and one was</p> <p>16 Sunbow. They often overlapped.</p> <p>17 Q. Just to come back to this, have you ever</p> <p>18 seen what in your mind's eye was a complete</p> <p>19 integrated contract dealing with the Transformers</p> <p>20 music, has anyone shown you that yet?</p> <p>21 A. No.</p> <p>22 Q. Now you were shown My Little Pony and</p> <p>23 Friends agreement a moment ago which was Exhibit-N.</p> <p>24 Do you recall that?</p> <p>25 A. Yes.</p>

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1 Q. And I believe you said you, Kinder and
2 Bryant, did not do the show and correct me if I'm
3 wrong, and this agreement pertained to a single
4 composition?
5 A. Yes.
6 Q. What was the name of the composition?
7 A. How Does My Garden Grow. And it was an
8 exception. Normally we each worked on something and
9 submitted at least two versions. That was not the
10 case on this. It was like two hours, he called up,
11 can you send it. I sent it over, done.
12 It wasn't handled the way most of these
13 were. I did write the theme song for the show but
14 this contract wasn't for that. My Little Pony and
15 Friends, we did the theme song but not the songs,
16 other than that one, and it was a gift.
17 Q. Let me just take a look at the exhibits.
18 When was the Jem Show theme written, do you recall,
19 how about in terms of date on the agreement?
20 A. I've been so good with dates. '85?
21 Q. Don't guess.
22 A. I feel like I'm on a game show because I
23 really don't know. I don't remember.
24 Q. And with respect to Dobishinski and TAMAD,
25 your testimony was that he took a fee from the monies

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1 he collected and then he distributed them to you and
2 to Anne, he split it basically?
3 A. Took his fee out, the monies went directly
4 to him in Hollywood which actually created a big
5 problem for us because California determined we were
6 making income in California and they sent us tax
7 bills that were huge and it took us every year, we
8 had to go through the same thing, letters and letters
9 and letters to prove that we didn't make that money
10 in California.
11 Q. What were the source of the funds from
12 which Dobishinski took his cut and then paid you and
13 Ms. Bryant?
14 A. BMI and Ascot.
15 Q. Performance royalties only?
16 A. I think that's all we ever received. There
17 may have been some synchronization fees.
18 Q. Do you know of any?
19 A. I don't know what they were.
20 Q. And this was a videotaped deposition taken
21 pursuant to the court order but would you make
22 yourself available for testimony at the trial when
23 the trial resumes?
24 A. Yes, I'll make every effort to do that.
25 Q. Do you know, sir, whether there was a

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1 different agreement between Sunbow and Kinder Bryant
2 related to My Little Pony and Friends theme, the one
3 that you did write?
4 A. I think there was.
5 Q. And what would you -- would your
6 recollection have been in terms of the compensation
7 arrangement?
8 MS. PHARES: Excuse me. Was there or was
9 there not a separate agreement?
10 MR. MONAGHAN: He said he thinks there was.
11 A. I think there was but I don't remember the
12 terms.
13 Q. Okay, that's fine. One last run-through.
14 Ms. Phares was asking you whether or not,
15 because the settlement agreement provided for leases
16 to be held in escrow, whether somehow that subject,
17 I'm paraphrasing, somehow that issue had a bearing on
18 your testimony here today. Did it?
19 A. Absolutely none. In fact, I had completely
20 forgotten about that.
21 Q. Have you told the truth today, sir?
22 A. Yes, I have.
23 MS. PHARES: Objection.
24 MR. MONAGHAN: You object to the truth?
25 MS. PHARES: I object to the question.

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1 MR. MONAGHAN: That's it. Thank you very
2 much, sir.
3 RE-CROSS EXAMINATION
4 BY MS. PHARES:
5 Q. What does an integrated contract mean?
6 MR. MONAGHAN: I didn't cover that in my
7 re-direct.
8 MS. PHARES: You asked about an integrated
9 contract.
10 MR. MONAGHAN: I did but I didn't cover it
11 in my re-direct, but go ahead.
12 MS. PHARES: You asked it in your re-direct,
13 Pat.
14 MR. MONAGHAN: I don't think so.
15 Q. What does an integrated contract mean?
16 A. You'd have to give it some context. Oh,
17 integrated between Sunbow and --
18 Q. Don't look at Mr. Monaghan. If you know,
19 you know.
20 A. You've taken it out of context now.
21 Q. Mr. Monaghan asked you if you had ever seen
22 an integrated contract for Transformers?
23 MR. MONAGHAN: I believe it said complete.
24 Q. Complete integrated contract for
25 Transformers?

<p style="text-align: right;">185</p> <p>1 A. Okay. Now I know what you're asking. I 2 have not integrated contract to me, complete 3 integrated contract, if I can use that word, means 4 the pages that belong together are all there and in a 5 row and those are not the pages that belong together. 6 So I don't even know if that's the contract. 7 Q. I'm only talking -- I'll ask a different 8 question. No, I won't ask a question. 9 So the one you're talking about is the 10 contract between Kinder and Bryant and GBI, is that 11 correct? 12 A. True. I have not seen any other contract 13 than that, so I have not seen a complete integrated 14 contract. 15 Q. And in the notion of a complete integrated 16 contract, does complete and integrated mean anything 17 different to you? Do those two terms mean anything 18 different to you? 19 A. Only it could be complete and out of order. 20 Integrated would mean in order to me. 21 Q. I think maybe in a later question you 22 answered this but I wasn't sure. When you say you 23 wrote the theme song for My Little Pony and Friends, 24 that was the song for the fully animated children's 25 television series, is that correct?</p>	<p style="text-align: right;">187</p> <p>1 CERTIFICATE OF OATH 2 3 4 STATE OF FLORIDA 5 COUNTY OF MIAMI-DADE 6 7 8 I, the undersigned authority, certify that DR. 9 CLIFFORD KINDER personally appeared before me and was 10 duly sworn. 11 12 WITNESS my hand and official seal this 10th day 13 of August 2006. 14 15 16 17 18 19 DINA M. AMATO 20 Notary Public - State of Florida 21 My Commission No. DD197337 22 Expires: June 3, 2007 23 24 25</p>
<p style="text-align: right;">186</p> <p>1 A. Yes. It was based on the original My Little 2 Pony that I wrote at Michlin and Company and then a 3 new section was written to go along with it, to 4 extend it and make it longer. 5 Of course, I did that with Anne Bryant, who 6 was -- because that was at Kinder and Bryant that we 7 did that. 8 MS. PHARES: Thank you. 9 MS. SAFFER: Could we have a moment please? 10 (SHORT BREAK) 11 MS. SAFFER: I have no further questions. 12 (Reading and subscribing waived.) 13 (Thereupon the taking of the deposition was 14 concluded.) 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">188</p> <p>1 REPORTER'S DEPOSITION CERTIFICATE 2 3 STATE OF FLORIDA 4 COUNTY OF MIAMI-DADE 5 6 I, DINA M. AMATO, Certified Shorthand Reporter, 7 certify that I was authorized to and did 8 stenographically report the deposition of DR. 9 CLIFFORD KINDER, that a review of the transcript was 10 not requested; and that the transcript is a true and 11 complete record of my stenographic notes. 12 13 I further certify that I am not a relative, 14 employee, attorney, or counsel of any of the parties, 15 nor am I a relative or employee of any of the 16 parties' attorney or counsel connected with the 17 action, nor am I financially interested in the 18 action. 19 20 DATED this 10th day of August 2006. 21 22 23 24 25 DINA M. AMATO</p>